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**Safeguarding the Future: Does the African Union have the capacity to protect children
in armed conflicts?**

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SINNSHAW MELHIKU TIRUNEH: Safeguarding the Future: Does the African Union have the capacity to protect children in armed conflicts?

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At the time of writing this thesis, there are ongoing armed conflicts in 8 African countries where thousands of children are being killed, maimed, displaced, and abducted into armed groups and in some cases into armed forces to serve as child soldiers, sex slaves, and porters among other roles that violate their rights. Thousands of other children face vulnerabilities in post-conflict situations including lack of basic services and separation from their families. Grave violations of children's rights in armed conflicts are taking place despite many African countries being signatories to international and regional instruments that provide for children's protection in such situations most notably the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. At the time of writing, the latter has been adopted by 47 out of 54 member states of the African Union (AU) – a regional organization that is a major actor in the area of peace and security in Africa and one that has established institutional and legal mechanisms to protect human rights. The aim of this study is to investigate whether the AU has the capacity to protect children in armed conflicts. Given the gravity of the situation in Africa and the fact that children make up about half of the continent's population it seems that addressing this issue is a test of the AU's commitment to ensuring peace and security and protecting human rights. This study attempts to contribute to the dearth of literature on this subject.

Using grounded theory methodology, a theory was developed to address the question of whether the AU has the capacity to protect children in armed conflicts. This was based on coding and analysis of in-depth interviews with key informants – who are knowledgeable on the subject - as well as a review of literature particularly on the role played by the African Union (AU) in addressing the problem. The theory developed by this study is that the AU's lack of capacity to protect children in armed conflict is both a manifestation and a product of the issue not being high on its agenda.

This study found that the AU lacks the institutional and structural capacity to protect children in armed conflicts and a determining factor is a lack of political will among many of its member states to deal with the issue. Institutional and structural challenges in the AU that militate against protection of children in armed conflicts being high on its agenda lie in the areas of: setting priorities, structure, resources and capacity, and coordination with other actors.

Keywords: children in armed conflicts, African Union, child rights, child protection, peace and security

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List of Acronyms

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACPF	African Child Policy Forum
ACHPR	African Charter on Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AFFC	Africa Fit for Children
AFISMA	Africa-led Intervention Support Mission to Mali
AMC	Africawide Movement for Children
AMU	Arab Maghreb Union
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
CAR	Central African Republic
CCR	Centre for Conflict Resolution
CEN-SAD	Community of Sahel-Saharan States
CIAC	Children in Armed Conflict
COMESA	Common Market for Eastern and Southern Africa
CRC	Convention on the Rights of the Child
CSI	Child Soldiers International
CSO	Civil Society Organization
DRC	Democratic Republic of Congo
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
GTM	Grounded Theory Methodology
IBCR	International Bureau for Children's Rights
ICC	International Criminal Court

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority for Development
IHL	International Humanitarian Law
ISS	Institute for Security Studies
LRA	Lord's Resistance Army
MDGs	Millennium Development Goals
MONUSCO	UN Organization Stabilization Mission in the DRC
MRM	Monitoring and Reporting Mechanism
NGO	Nongovernmental Organization
OAU	Organization of African Unity
OPAC	Optional Protocol to the CRC on the involvement of children in armed conflict
PRC	Permanent Representatives Committee
PSC	Peace and Security Council
PSD	Peace and Security Department (of the AU Commission)
PSO	Peace Support Operation
PTSD	Post-Traumatic Stress Disorder
RECs	Regional Economic Communities
SADC	Southern African Development Community
SPLA	Sudan Peoples' Liberation Army
TAPRI	Tampere Peace Research Institute
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UHDR	Universal Declaration of Human Rights

Chapter 1 Introduction

"Safety and security don't just happen: they are the result of collective consensus and public investment. (...) We owe our children – the most vulnerable citizens in any society – a life free from violence and fear."

(Nelson Mandela, Former President of the Republic of South Africa, cited in Krug E.G *et al.* (eds.) 2002, p. ix).

Background

Protection of children in armed conflicts (CIAC) has been on the international political agenda for more than 2 decades. International and regional norms and institutions have been established to address the issue however during armed conflicts children's wellbeing and psychosocial development remains under threat as they are killed, maimed or fall victim to many kinds of abuses and vulnerabilities. A 2009 report by the United Nations Children's Fund (UNICEF) entitled *Machel Study 10-year Strategic Review: Children and Conflict in a Changing World* stated that: "according to 2006 estimates, more than 1 billion children under the age of 18 were living in areas in conflict or emerging from war. Of these, an estimated 300 million were under age five, and more than 18 million children were refugees or internally displaced" (2009, p.iv). A common and widely reported abuse is the forcible recruitment of children into national armed forces or armed groups to take a direct part in hostilities-widely referred to as child soldiers. Children may sometimes join voluntarily to support their families financially or to avenge the killing of a family member by the other party to the conflict. Jean Francois Basse¹ says that: "it is now common cause that children are more likely to become child soldiers if they are separated from their families, displaced from their homes, living in combat zones or have limited access to education". Children captured during armed conflicts are held in detention for associating with armed groups. Boys and girls are abducted or forcibly recruited to serve as porters and sex slaves. However, girls are particularly vulnerable

¹ Jean François Basse (Child Protection Adviser, Department of Peace and Security, African Union Commission), Interviewed on 1 September 2014 by email.

to rape and sexual violence by armed groups and in some cases armed forces as well. They are more often than not abducted to be sex slaves or child brides and many give birth during armed conflicts and in cases of protracted conflicts their children may eventually take part in hostilities.

Children who are fortunate to escape from areas of armed conflict end up as child refugees in neighboring countries or internally displaced persons (IDPs) within their own country. Many children become orphans as their parents are killed during armed conflicts while others are separated from their families and have to live under the care of community members until their parents are found and this comes with possible risks of abuse and exploitation. This breakdown of family and community support systems, particularly in poor countries, puts children at a particular disadvantage than other vulnerable groups during armed conflict as they are highly dependent on these structures in the absence or incapacity of government services. Dr Shimelis Tsegaye² observes that: “[CIAC] have very limited protection from formal government structures, and the family, as both these institutions often break up or might be caught up in the conflict and fail to operate adequately, or fail to enforce the existing laws and policies. These children may experience post-traumatic stress disorder (PTSD) in post-conflict situations. Children may also face abuse and vulnerabilities in refugee or IDP camps which are supposed to be safe havens. As a result of psychological trauma that they experience, reintegration into their communities is difficult especially for child soldiers. Therefore the impact of armed conflicts on children’s wellbeing and psychosocial development lasts well beyond the duration of hostilities and can leave an indelible mark on them. Although violations of children’s rights in armed conflicts are an international problem, children in Africa have been particularly affected as the continent has experienced a greater number of armed conflicts than in other parts of the world.

Despite the ratification of majority of African countries to international and regional instruments that address the needs of CIAC such as the United Nations (UN) Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child

² Shimelis Tsegaye (Head of the Child and the Family Programme, The African Child Policy Forum (ACPF))
Interviewed on 15 August 2013 via email.

(ACRWC), children on the continent continue to face many kinds of abuses and vulnerabilities in armed conflicts. To put the issue into context one has to consider that children currently make up about half of Africa's population and global projections estimate that the continent's child population will increase exponentially. A 2014 report by UNICEF entitled *Generation 2030/Africa: Child Demographics in Africa* states that: "almost 2 billion babies will be born in Africa in the next 35 years. Over the same period Africa's under-18 population will increase by two thirds, reaching almost 1 billion by mid-century; and close to half of the world population of children will be African by the end of the 21st century" (2014, p.5). At present, children are being affected by armed conflicts in Central African Republic (CAR), Democratic Republic of Congo (DRC), Somalia, Libya, South Sudan, Mali, Sudan (Darfur), and Nigeria. A report entitled *The State of Africa's Children Report 2010* by the African Union's (AU) Department of Social Affairs states that: "[t]here are an estimated 120,000 children associated with armed forces and armed groups in Africa" (African Union 2010b, p.86). However, a report by the African Child Policy Forum (ACPF)³ entitled *The African Report on Child Wellbeing 2013: Towards greater accountability to Africa's children* says that: "Africa has fewer conflict-related deaths among children than a decade ago" (ACPF 2013, p.xiii). Table 1 below presents data obtained from the annual report of UN Secretary General Ban Ki-Moon to the UN Security Council on the situation of CIAC from January to December 2013 (Secretary General Report 2014). It shows that grave violations against CIAC are particularly acute in Somalia which is higher than it is in DRC-a country that is about 3.6 times larger in size. All countries listed in Table 1 below are on the agenda of the UN Security Council and in most cases both government armed forces and armed groups are implicated as being engaged in child recruitment. A report released by the UN Organization Stabilization Mission in the DRC (MONUSCO) on 24 October 2013 entitled *Child Recruitment by Armed Groups in DRC From January 2012 to August 2013* states that recruitment of children by armed forces in the DRC is systemic (MONUSCO 2013).

³ Pan-African center for policy research and dialogue on the African child based in Addis Ababa, Ethiopia.

Table 1: Data on grave violations against children in armed conflicts in select AU member states from January-December 2013

Country	Children Killed	Children Maimed or Injured	Children Recruited by Armed Forces or Groups	Cases of Sexual Violence Against Children
Central African Republic ⁴	27	115	188 (171 boys and 17 girls)	20
Democratic Republic of Congo	68	96	910 (783 boys and 127 girls)	209
Somalia	237	494	1,293	154
South Sudan	63	83	162	7
Sudan (Darfur)	91	98	18	62
Sudan (South Kordofan, Blue Nile State, Abyei)	6	31	42	3*
Mali	6	51	57	

* The UN Secretary General says that this low figure is due to “limited monitoring capacity” in the areas.

Source: Secretary General Report (2014)

Children face vulnerabilities in post-conflict situations (e.g. Ivory Coast) including lack of basic services and separation from their families. Franco Wandabwa⁵ says that children previously associated with armed groups in Liberia are having a hard time reintegrating in their communities. This country experienced a military coup and two civil wars from 1980-2003. UN Secretary General Ban Ki-Moon reported that during 2013 57 children were recruited by armed groups in Mali and “explosive remnants” killed 6 and injured 51 (Secretary General Report 2014). From January 2012 to early 2013, the country experienced a military coup as well as an armed conflict with a secessionist armed group. With regards to Ivory Coast, the

⁴ As UN monitoring was restricted in this country the reported cases of grave violations against children are only indicative.

⁵ Franco Wandabwa (Advocacy Director, Africa Area Office, Save the Children) Interviewed on July 25, 2013 in Addis Ababa, Ethiopia.

UN Secretary General said that the UN was able to confirm 30 grave violations against children, especially sexual violence against girls with 23 documented cases (*Ibid*). The Lord's Resistance Army (LRA)-a rebel group led by Joseph Kony that is accused of committing grave violations against thousands of children in Uganda (including abducting them as child soldiers, sex slaves and porters) is currently spread out along border areas between the Democratic Republic of Congo, Central African Republic, and South Sudan where it has caused the displacement of 353,000 persons many of whom are children (Secretary General Report 2014). Franco Wandabwa⁶ says that: "some of those children [who were abducted in Uganda] have grown into adults and some of them are giving birth to children who are also becoming child soldiers".

The UN Secretary General's Report (2014) points out that most of its data and statistics on the number of CIAC and post-conflict situations in Africa are indicative and in most cases underreported due to the UN's limited monitoring capacity in some countries and government restrictions on access in others. Vincent Ochilet⁷ says that restrictions on access to children and women affected by armed conflicts are sometimes used as a weapon of war. Hence due to restrictions on access and limited capacity to monitor violations against CIAC many children may remain invisible with perpetrators continuing to act with impunity.

Children in post-conflict situations are vulnerable to a resurgence of hostilities. In a 2013 report by the AU Peace and Security Council (PSC)⁸ entitled *Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa to the Twenty First Ordinary Session of the Assembly of the Union* it warned that: "the progress made to resolve conflict [in Africa] remains particularly fragile, with a high risk of reversal, whether in Mali, the Great Lakes Region, Somalia, Darfur or in the relations between Sudan and South Sudan" (African Union 2013d, p.2). Relations between Sudan and South Sudan are particularly fragile as each is vying for greater control over rich oil resources in the border area of Abyei.

⁶ Interview, 25 July 2013.

⁷ Vincent Ochilet (Deputy Head , International Committee of the Red Cross (ICRC) to the African Union) Interviewed on 19 July 2013 in Addis Ababa, Ethiopia.

⁸ The PSC is the AU organ with the mandate to address peace and security issues in Africa.

The issue of CIAC has been the subject of numerous research, books, reports, news articles and programmes. Most of the literature is written by UN agencies and international Nongovernmental Organizations (NGOs) focusing on presenting the plight or lived experience of children and their initiatives to provide them with protection, mostly in post-conflict situations. Literature on CIAC has predominantly focused on child soldiers to the neglect of other groups of children whose wellbeing is affected by armed conflicts. A seminar report by the Centre for Conflict Resolution (CCR)⁹ entitled *Children and Armed Conflicts in Africa* argues that: “[t]he frequent emphasis on child soldiers has the potential to dilute the efforts made on other critical aspects of the impact of armed conflict on children” (2007, p.16).

At the international level, the first global effort to comprehensively document the impact of armed conflict on children was a 1996 report entitled *Impact of Armed Conflict on Children* by Graça Machel¹⁰. It set the international agenda for action on the issue and led to some institutional changes within the UN to address the problem (See Chapter 2). In addition to confirming that there were more than 300,000 child soldiers in the world at the time - a figure initially reported by the Coalition to End the Use of Child Soldiers (now Child Soldiers International)¹¹ - the report also highlighted the fact that armed conflicts violate every right of a child from their right to life to the right to be with their family or community (Machel 1996). In 2001, a book by Machel entitled *The Impact of Armed Conflict on Children: A critical review of progress made and obstacles encountered in increasing protection for war-affected children* provided an analysis of progress made 5 years on. She recognized that progress had been made in setting international norms and standards for protection of CIAC however Machel (2001) observed that children continued to face the same types of abuses and vulnerabilities which showed a “collective failure” of the international community. UNICEF’s 2009 report - that was mentioned earlier - reviewed progress made on CIAC a decade after Machel’s 1996 report (UNICEF 2009). It recognized that not enough attention was being given to other

⁹ Centre for Conflict Resolution (CCR) is a pan-African not-for-profit organization based in Cape Town, South Africa.

¹⁰ Former Minister of Education of Mozambique, member of The Elders, international advocate for women’s and children’s rights, and widow of Former South African President Nelson Rolihlahla Mandela.

¹¹ Child Soldiers International (CSI) is a human rights organization advocating for an end to the use of child soldiers.

impacts of armed conflict on children aside from recruitment into armed groups including lack of access to education, health care, and water and sanitation (*Ibid*). The report also pointed out that in order to address the issue of CIAC greater consideration would have to be given to the changing nature of conflicts which were more intrastate than interstate and the adoption of non-traditional forms of warfare by armed groups was inflicting greater violence on children and other vulnerable groups. A 2012 report by Child Soldiers International (CSI) entitled *Louder than words: An agenda for action to end state use of child soldiers* found that children were being recruited into armed forces of more than 20 UN member states. What makes it different from other reports is that it included a checklist that governments could use to ensure that children were not recruited by armed forces or state-allied armed groups (Child Soldiers International 2012).

Literature has also been published that focus particularly on protection of CIAC in Africa while some discuss the issue as part of a general discourse on children's rights. At a more general level, a 2004 book by Dr Rachel Murray¹² entitled *Human Rights in Africa: From the OAU to the African Union* examined the role of the Organization of African Union (OAU) and its successor the AU in dealing with human rights issues on the continent including children's rights. It provided insights into the decision making processes in the AU with regards to human rights. A seminar report by CCR (2007) summarized outcomes of a regional seminar on "Strengthening the African Union Framework for the Protection of Children Affected by Armed Conflict" that was held in April 2007 in Johannesburg, South Africa. It provided information on international and regional (AU) mechanisms for the protection of CIAC in Africa and discussed some opportunities and challenges that existed at the time to addressing the issue. A book entitled *Children's Rights in Africa: A Legal Perspective* - edited by Prof. Julia Sloth-Nielsen¹³ and published in 2008 - provided a volume of essays on major themes in the discourse on children's rights in Africa (Sloth-Nielsen 2008). It included one written by Dr Benyam Dawit Mezmur¹⁴ entitled *Children at Both Ends of the Gun: Child Soldiers in Africa* in which he discussed the international legal framework for the protection of children from recruitment by armed forces or groups. A report by the AU Department of Social Affairs

¹² Professor of International Human Rights Law at the University of Bristol, United Kingdom.

¹³ Professor of Law at the University of Western Cape, South Africa.

¹⁴ Chairperson of the African Committee of Experts on the Rights and Welfare of the Child (July 2010-July 2015).

entitled *The State of Africa's Children Report 2010* reviews progress made by AU member states in meeting their commitments to ensure children's rights and wellbeing including their protection in armed conflicts. Though the literature mentioned above is by no means an exhaustive list of everything written regarding CIAC it illustrates the discourse on the issue. A review of literature indicated that very little has been written regarding the role of the AU and its various organs in the protection of CIAC.

Research Problem

The AU is a regional organization that is increasingly taking up more and more responsibility for peace and security in Africa. At the time of writing there are ongoing armed conflicts in 8 AU member states and these are high on the AU's agenda. Violations and abuses against children's rights during armed conflict is an issue of peace and security. Given the gravity of the situation of CIAC in Africa and the fact that children make up about half of the continent's population it seems that addressing this issue is a test of the AU's commitment to ensuring peace and security and protecting human rights¹⁵. This study investigates whether the AU has the capacity to protect CIAC. It contributes towards addressing the dearth of literature regarding the role of the AU in this area.

Definition of Key Concepts

The definitions of key concepts listed below have been borrowed from the African Charter on the Rights and Welfare of the Child (ACRWC) and a UNICEF document entitled *Introduction to the Convention on the Rights of the Child: Definition of key terms* (UNICEF s.a.). For the purpose of this study the following definitions will apply:

Child. "[A] child means every human being below the age of 18 years" (African Charter on the Rights and Welfare of the Child 1990)

¹⁵ See Articles 3 (e) and (h) of the AU Constitutive Act.

Children in Armed Conflicts. Children in armed conflicts (CIAC) refers to children (see definition above) affected by any type of armed conflict be it interstate or intrastate in nature.

Child Soldier. A child soldier is any child under the age of 18 who is recruited by an armed group or armed forces to take a direct part in hostilities.

Member State. A member state is any country that has ratified the Constitutive Act of the AU to become a member of the organization.

State Party. “A ‘State party’ to a treaty is a country that has ratified or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument” (UNICEF s.a.).

Research Methodology

Conducting research on the role of the AU - a relatively new organization launched in 2002 – in protection of CIAC is challenging as there is a dearth of literature on the subject. Given this challenge, this study was guided by a literature review, interviews with key informants and grounded theory as its research methodology. The latter was discovered in the 1960s by two American sociologists, Barney G. Glaser¹⁶ and Anselm L. Strauss¹⁷, in 1967 during their collaborative work on medical sociology in California, U.S.A. In his book entitled *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* John W. Creswell¹⁸ points out that:

Grounded theory [is a strategy], in which the researcher attempts to derive a general, abstract theory of a process, action, or interaction grounded in the views of participants in a study. This process involves using multiple stages of data collection and the refinement and interrelationship of categories of information (2002, p.16).

¹⁶ Founder of the Grounded Theory Institute.

¹⁷ Before his death on 5 September 1996 he was Professor Emeritus at the University of California, San Francisco.

¹⁸ Professor of Educational Psychology at the University of Nebraska-Lincoln.

The main purpose behind grounded theory methodology (GTM) is to generate theory that is grounded in data. In other words it adopts a bottom-up approach to research rather than trying to apply theory to data. This is not to say that the latter approach is wrong but rather GTM seemed more suitable for this study given that there is little literature on the subject. According to classical GTM, a research question should itself emerge from the research process or from main concerns of study participants. A divergence over this point emerged between Glaser and Strauss especially when the latter published a book in 1990 with Juliet Corbin¹⁹ entitled *Basics of qualitative research: Grounded theory procedures and techniques*. In their book entitled *Grounded Theory: A Practical Guide* Melanie Birks²⁰ and Jane Mills²¹ explained that:

Strauss and Corbin's assertion in their 1990 text that the research question be narrow and function to establish boundaries to the research was a key element in the 'emergence versus forcing' debate that underpinned Glaser's (1992) subsequent rebuttal. Glaser's (1998) stance is based on his belief that for a problem to be of relevance, it must come from those for whom it has significance (Birks and Mills 2011, p.20).

This study deviates from classical GTM in that the author had established a broad research question before undertaking field work that served to limit the scope. Another deviation is that a preliminary review of literature was carried out to assess general knowledge on the subject and to establish the significance of the study. In addition to this, interview protocols were established before conducting field work; a practice discouraged by classical grounded theorists (*Ibid*). These methodological choices were made in the interest of time as this study is a Master's thesis and given the fact that extensive field work in Africa with multiple stages of data collection would have been too expensive.

GTM was also selected as it allows for an in-depth analysis of the research problem through repeated and transparent examination of data. In their book entitled *The Sage Handbook of*

¹⁹ Lecturer at San Jose State University, School of Nursing, USA, and Adjunct Professor at the International Institute for Qualitative Research, University of Alberta, Canada.

²⁰ Professor of Nursing Services, College of Healthcare Sciences at the James Cook University, Australia.

²¹ Adjunct Professor in the College of Healthcare Sciences at the James Cook University, Australia.

Grounded Theory, Anthony Bryant²² and Kathy Charmaz²³ argue that: “[one of the key strengths of grounded theory] is that it offers a foundation for rendering the processes and procedures of qualitative investigation visible, comprehensible, and replicable” (2007, p.33). This study selectively uses essential methods of GTM including its processes of inductive coding of data and analysis to generate a theory. Two methods of data collection that were used were a literature review and in-depth interviews with key informants. According to GTM’s inductive process, analysis of interviews precedes a literature review as the latter is informed by findings from the former. In an article entitled *In-depth Interviewing: The process, skill and ethics of interviews in peace research*, Karen Brounéus²⁴ argues that: “when firmly based on and compared with previous research, that is when it [an in-depth interview] is put into the realm of the ‘collective enterprise’ of science, an in-depth interview study can suggest valid descriptive or causal inferences” (cited in Höglund and Öberg 2011, p.131). The approach of using different sources of information was selected in order to analyze the discourse on the subject from a broader perspective.

Interviews

In-depth interviewing of key informants was selected as one of the data gathering methods for this study to gain an understanding of complexities of the subject again given the little knowledge that exists. Brounéus observes that: “in-depth interviewing offers a unique method and source of information since it provides research with depth, detail and perspective on a certain research question, and at a certain moment in time” (*Ibid*, p.131). Purposive sampling was employed to identify key informants to seek multiple and diverse perspectives and to see how these relate to each other as well as with the literature. The key informants for the in-depth interviews were selected based on their knowledge of or active involvement in contemporary initiatives and/or past initiatives related to the protection of CIAC. The following is an alphabetical list of the key informants:

²² Professor of Informatics at Leeds Metropolitan University, United Kingdom.

²³ Professor of Sociology at Sonoma State University, USA.

²⁴ Lecturer at the Centre for Peace and Conflict Studies, University of Otago, New Zealand.

- Ayalew Legesse Yesuph [Child Protection Assistant Coordinator, Ethiopia Program, International Rescue Committee]
- Catherine Wanjiru Maina [Senior Social Worker, Secretariat of the African Committee of Experts on the Rights and Welfare of the Child]
- Chikezie Anyanwu [Pan African Program Specialist, African Union Liaison & Pan Africa Program Office; Plan International]
- Daniel Tefera [Lecturer in the Department of Psychology at Addis Ababa University and Deputy Chair of the General Assembly of ANPPCAN (The African Network for the Prevention and Protection against Child Abuse and Neglect) Ethiopia Chapter]
- Francis Onditi [Regional Child Protection Project Coordinator, Save the Children East Africa Regional Office]
- Franco Wandabwa [Advocacy Director, Africa Area Office, Save the Children]
- Mary [Pseudo] [Staff member of an international organization]
- Jean François Basse [Child Protection Adviser, Department of Peace and Security, African Union Commission]
- Matthias Wevelsiep [Adviser on ICT for statebuilding, Crisis Management Initiative (CMI)]
- Michael [Pseudo] [Staff member of a regional organization]
- Shimelis Tsegaye, PhD [Head of the Child and the Family Programme, The African Child Policy Forum (ACPF)]
- Solomon Dersso, PhD [Head of the Peace and Security Council Report, Institute for Security Studies (ISS)]
- Tiruneh Sinnshaw [Retired staff member of UNICEF and currently Public Health Consultant]
- Vincent Ochilet [Deputy Head , International Committee of the Red Cross (ICRC) to the African Union]

The UNICEF Liaison Office to the African Union and UN Economic Commission for Africa and two persons working for international organizations (who requested anonymity) had also participated as key informants for this study. Interviews were semi-structured to allow for open two-way communication to elicit detailed information on the subject. To avoid placing constraints on information that emerged from interviews questions were designed to be broad

and open ended. Open-ended questions encouraged respondents to talk more extensively about the subject matter which is useful when using GTM as everything is based on the data and what emerges from its analysis. After the in-depth interviews were transcribed coding was carried out to analyze data.

Coding Process

Coding involved highlighting and labeling data which was later used for creating conceptual categories. Bryant and Charmaz (2007) say that: “incidents articulated in the data are analysed and coded, using the constant comparative method, to generate initially substantive, and later theoretical categories” (p.266). Before data was used to generate a theory, it went through a back-and-forth process of coding and analysis until a higher level of abstraction was reached and core categories could form parts of an overall theory. Prior to coding, audio recordings of interviews were transcribed and each transcript was read and a memo kept to record first impressions. This was followed by a process of substantive coding which Bryant and Charmaz define as “the process of conceptualizing the empirical substance of the area under study: the data in which the theory is grounded” (*Ibid*, p.275). The first step under this process was open-coding where data was deconstructed into conceptual categories or building blocks of a theory. Through line-by-line reading of data, pertinent information such as relevant words, phrases, sentences or sections were highlighted and labeled. This assessment of data was carried out to ensure that no important information was left out that could potentially make the theory less relevant.

After open-coding, codes were compared in order to identify gaps in data which guided further search for information. New codes were created by combining two or more similar codes and these were then grouped into categories. From the constant comparison and analysis of codes and categories further delimitation of data lead to the emergence of a core category. According to Bryant and Charmaz, “the core variable [category] reoccurs frequently in the data and comes to be seen as a stable pattern that is increasingly related to other variables” and “it relates meaningfully and easily with other categories” (*Ibid*, p.280). Once the core category was identified, selective coding was carried out where the literature review was

delimited to only data relevant to the core category and related categories. Through this process categories that formed part of the emerging theory were saturated. They were then compared and assessed to identify connections which formed the core of the theory.

Literature Review

As mentioned earlier, a preliminary literature review was conducted to assess general knowledge on the subject and to establish the study's significance. A second and more in-depth literature review was carried out after coding and analysis of data from interviews. This was done through a process of triangulation which according to GTM improves the validity of the processes used. Data related to the protection of CIAC in Africa were sought from different sources including:

1. AU Headquarters
2. Institute of Security Studies (ISS)
3. University for Peace, Africa Programme
4. The African Child Policy Forum (ACPF)
5. Tampere Peace Research Institute (TAPRI)
6. Save the Children Finland
7. Tampere University Library (Main Library)
8. Library of the Finnish Parliament
9. Helsinki University Library (City Centre Campus Library)
10. Academic and multilateral papers
11. The Internet

Delimitations

The author acknowledges that there are many important issues related to protection of CIAC in Africa including the role of the family, community, houses of religious worship, traditional leaders, and the private sector among others. Although these issues were not included in the

research design, questions for in-depth interviews with key informants were designed in a way that would allow for them to emerge.

Ethical Consideration

There were minimal ethics considerations for this study as it was based on a literature review and in-depth interviews with key informants who are not classified as vulnerable people. As per principles of ethical research, interviewees were informed of their right to anonymity and requested for permission to use their words as part of the study.

Chapter 2 Understanding the institutional and legal framework for the protection of children in armed conflicts in Africa

2.1. International Norms and Institutions

International norms for the protection of CIAC exist and have influenced how the issue is perceived in the African Union (AU) and by its member states. A worldwide movement initiated by the International Committee of the Red Cross (ICRC) to address the problem of civilian deaths in armed conflicts culminated with the passing of the Geneva Conventions of 1949 - known as International Humanitarian Law (IHL) - and later their two Additional Protocols in 1977. The Geneva Conventions are universal with every country in the world as a signatory including South Sudan - the newest country in the World - which acceded on 16 July 2012. While the first, second, and third Geneva Conventions focused on protection of combatants and prisoners of war, the fourth provides for protection of civilians who are not participants to hostilities, including women, children, and the elderly. The fourth Geneva Convention includes provisions for children's need to access food, clothing, and medicine and to be reunited with their families. In addition to this, IHL makes provisions for children to be separated from adults during detention, and provided access to education. However, in an online article entitled *Armed Conflict: the Protection of Children under International Law* Carolyn Hamilton¹ and Tabatha Abu El-Haj² argue that: "children are not a focus of the [Fourth Geneva] Convention. Indeed, they are barely recognized as a separate group and are treated as only one segment of the vulnerable part of the civilian population (Hamilton and El-Haj, s.a.). Dr Benyam Dawit Mezmur on his part argues that: "[provisions of the fourth Geneva Convention] fall short of addressing the protection of child soldiers specifically" (Mezmur 2008, p.200).

Though these treaties were primarily focused on international conflicts, they all have a common Article 3 that provides for protection of non-combatants whether in international or non-international conflicts (Machel 1996). Dr Mezmur points out that weaknesses of

¹ Professor Emeritus, University of Essex, Fellow, Human Rights Centre, University of Essex, Director of Research and International Programmes, Coram Children's Legal Centre.

² Associate Professor of Law, Thomas R. Kline, Drexel University.

Additional Protocol II include: “its failure to establish any measures of implementation or supervision to ensure compliance with its provisions and the requirement of a higher degree of intensity for its application (as it does not apply to riots or to isolated and sporadic acts of violence which have not reached the level of internal armed conflicts)” (Mezmur 2008, p.201). He further argues that most armed conflicts in Africa are intrastate and therefore not covered by Additional Protocol II. In total, IHL has 25 provisions for the protection of CIAC. For example towards addressing recruitment of child soldiers, Article 77 of Additional Protocol I states that: ‘[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces’. This means that special protection needs of children between the ages of 15 and 18 were not recognized. The United Nations Security Council has the authority to enforce the Geneva Conventions and their Additional Protocols and can refer cases of violations to the International Criminal Court (ICC).

International criminal law is another legal framework with an influence on how CIAC is considered by the African Union (AU). The Rome Statute of 1998 - that established the ICC in The Hague - refers to recruitment of children under the age of 15 into national armed forces or armed groups - whether in international or non-international armed conflicts - as a war crime. Similarly to IHL, a weakness of the Rome Statute is its exclusion of children between the ages of 15 and 18. There are 34 AU member states that are parties to this treaty and its establishment was supported by the OAU. At the time of writing, the ICC is trying to bring those responsible for war crimes to book. For example, in February 2006 it charged Thomas Lubanga Dyilo - founder of the Union of Congolese Patriots militia group in the DRC - with war crimes including recruitment of children under the age of 15. The ICC has also issued an arrest warrant for Joseph Kony - leader of the Lord’s Resistance Army (LRA) - for 33 counts of war crimes including recruitment of children under 15 to take part in hostilities. However he and other LRA members - that the ICC has issued warrants for - continue to remain at large. On 26 September 2013, the ICC upheld a ruling by the Special Court for Sierra Leone that found President Charles Taylor of Liberia guilty of war crimes, including the recruitment of child soldiers, and sentenced him to 50 years in prison. This ruling was a landmark for

international efforts to bring to account those accused of recruiting children to participate in hostilities.

The ICC has however been accused of unfairly targeting African countries with most of its current cases being against people from the continent. It more recently attracted controversy by charging the sitting President of Kenya, Mr. Uhuru Kenyatta, and his Deputy William Samoei Ruto with crimes against humanity during post-election violence in 2007-08. It was controversial to the extent that an extraordinary session of the AU Assembly of Heads of State and Government (AU Assembly) was held on 12 October 2013 to deliberate on the issue. The decisions and declarations of the session stated that: “[T]o safeguard the constitutional order, stability and integrity of [AU] Member States, no charges shall be commenced or continued before any International Court of Tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office” (African Union 2013a). This AU decision will affect the ICC’s as well as regional (AU) courts’ effectiveness in addressing the issue of recruitment of child soldiers in Africa among other war crimes. It is telling that AU Heads of States and Government can find the time and resources to meet for this purpose while they have never had a summit that was fully dedicated to children’s rights. This suggests that there are challenges related to priority setting in the AU which is discussed further in Chapter 3.

Aside from international criminal and humanitarian law, special assistance and protection for CIAC is also recognized in the Universal Declaration of Human Rights (UHDR) (1948)³, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966)⁴ and the International Covenant on Civil and Political Rights (ICCPR)⁵ (1966). The ICESCR and ICCPR are binding international treaties. In an article entitled *Child Well-Being: Children’s Rights Perspective* Prof. Jaap Egbert Doek⁶ explains that “[c]hild-specific provisions within the two covenants [ICESCR and ICCPR] were limited to the right to protection and assistance” (cited in Ben-Arieh *et al* 2014, p.191). Machel (1996) points out that though these treaties are

³ See Article 25 (2) of the Universal Declaration of Human Rights (UHDR).

⁴ See Article 10 (3) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

⁵ See Article 24 of the International Covenant on Civil and Political Rights (ICCPR).

⁶ Professor of Law at the Vrije Universiteit in Amsterdam, The Netherlands.

not child-specific, other rights that apply to children include “the right to life, the right to freedom from slavery, torture and arbitrary arrest” and “the right to food, clothing, housing, health and education” (p.50). Though protection of children has been provided for through IHL, international criminal law, and the above mentioned human rights treaties, there still remained a need to establish international norms that specifically recognized vulnerable groups of people, including women and children. The United Nations Convention on the Rights of the Child (CRC) is an international treaty that specifically focuses on children’s rights, including their right to protection.

Convention on the Rights of the Child

The CRC is the most widely ratified UN Convention and it sets out the human rights of children and obligates States Parties to ensure and respect them. In an article entitled *A theoretical analysis of the reality of children’s rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child*, Amanda Lloyd-Purvis⁷ explains that “[the CRC] is the first international instrument with a specific focus on the protection of the child as such, recognizing children as human beings of equal value” (2002a, p.12). It was adopted by the UN General Assembly in 1989. With the exception of South Sudan and Somalia, the CRC has been ratified by all other African countries. The UN Committee on the Rights of the Child is the treaty body mandated to monitor implementation of its provisions and States Parties are required to provide it with periodic information on the implementation of CRC. They are expected to submit an initial report two years after ratifying the CRC and one every five years thereafter. Many AU member states have submitted first and second periodic reports to the CRC Committee and close to half have submitted third and fourth periodic reports. To have a comprehensive overview of implementation of CRC in signatory countries, this Committee also invites international, regional and national civil society organizations (CSOs) to submit alternative reports. The purpose of these reports is not to challenge those submitted by governments rather they point out areas not covered in the latter that require greater attention towards comprehensively addressing children’s rights issues. On the basis of State Party and alternative reports, the CRC Committee issues its concluding observations that set out

⁷ Tutor in Law at the University of Surrey, United Kingdom.

recommendations on how states can improve their compliance with CRC and its optional protocols. Though the CRC Committee does not have a follow-up procedure at the national level to monitor implementation of its concluding observations, it coordinates and is informed by National Human Rights Institutions, CSOs, and UN agencies on the ground.

The CRC includes provisions for protection of CIAC. According to Article 38, ‘States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities’. Recruitment of children for military service was the subject of much debate during the drafting of CRC as a number of countries held reservations over the age limit of 18. A seminar report by CCR says that: “[the CRC] did not articulate the issue of the use of child soldiers in the strong and enforceable terms required by the scale of its malpractice in Africa” (2007, p.14). Though a compromise was reached to set the age limit at 15 in the CRC, disagreements over this issue later led to adoption of the first Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) by the UN General Assembly in 2000. It obligates States Parties to ensure that no child under 18 is recruited to participate in hostilities. To date OPAC has been signed by over 100 countries and adopted by the majority of AU member states. The AU adopted a Memorandum of Understanding in July 2002 that promoted the ratification of the Optional Protocol by its member states. According to a CD-ROM prepared by the African Child Policy Forum (ACPF) entitled *Child Law Resources Volume II: The Reporting Status of African States*, “[OPAC] has been ratified by 39 African states and 9 states have only signed it” and “a total of 11 states that ratified the treaty have submitted initial state party reports” (ACPF 2012). This low number in reporting makes it difficult for the CRC Committee to monitor the situation of CIAC in Africa. To date the AU member states that have not signed OPAC include Equatorial Guinea, Guinea, Mauritania, Sao Tome and Principe, and South Sudan. Those that have signed but not ratified the Protocol include Central African Republic (CAR), Gambia, Ghana, Guinea-Bissau, Liberia, Somalia, and Zambia. ACPF (2013) says that children below the age of 18 can be recruited into armed forces with parental consent in Congo Brazzaville, Kenya, Malawi, Seychelles and Sao Tome and Principe. Regarding challenges facing implementation of OPAC, the AU Department of Social Affairs says that: “[challenges include] widespread overdue state reporting, the substantial gap between state obligations and the status of their

children, and the limited enforceability of compliance with established children's rights by states parties" (African Union 2010b, p.16). This suggests that some countries may be signing such international treaties with no real intentions of actually implementing them.

Though the CRC has been widely ratified in Africa how relevant is it to protection of CIAC on the continent? In an article entitled *Paper Protection' Mechanisms: Child Soldiers and the International Protection of Children in Africa's Conflict Zones* Prof. David J. Francis⁸ argues that "[i]nternational legal instruments [including the CRC] designed to protect children in conflict zones, and in particular in Africa's complex political emergencies, are of limited relevance" (2007, p.209). He says that these instruments have a "Western-centric" definition of childhood which is incompatible with African traditional and cultural perspectives (*Ibid*). As will be discussed further below, this was one of the main reasons why the Organization of African Unity (OAU) decided to adopt an African instrument for children's rights. In a book entitled *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*, Dr Thoko Kaime⁹ points out that: "[n]o less than 70 state parties have entered reservations or declarations, some of which attempt to subject CRC under the various religious, cultural or traditional observations current in the concerned jurisdictions" (2009, p.16). The CRC, like most international legal instruments, is subject to interpretation at national levels hence governments can pick and choose which parts are compatible with local context and dismiss those that are not. Prof. Francis (2007) posits that international criminal law and other instruments designed to protect CIAC have little relevance as most post-conflict countries in Africa have been unable to domesticate them. He also observes that the CRC focuses only on the actions of States Parties while ignoring the reality that many conflicts in Africa are civil wars involving non-state actors hence making it irrelevant to addressing child protection under such circumstances (*Ibid*).

Another weakness of the CRC until recently was that it did not provide for a mechanism through which children could submit complaints to its Committee on violations of their rights including those committed during armed conflicts. The Optional Protocol to the CRC on a

⁸ Head of Peace Studies at the University of Bradford, United Kingdom.

⁹ Lecturer at the University of Leicester, United Kingdom.

Communications Procedure - which only came into force on 14 April 2014 with the ratification of 10 countries - is an instrument designed to address this shortcoming. It provides children or groups of children with a mechanism through which they or their representatives can submit complaints on violations of their rights. They can be submitted regarding violations of the CRC and all its optional protocols, including that on involvement of CIAC in hostilities. It also establishes an inquiry procedure for grave or systematic child rights violations. The caveat is that their country must be a State Party to this Optional Protocol and they have to exhaust all legal remedies within their country before submitting a complaint. It is too early to tell whether this Optional Protocol has been effective or not. Another international framework for protection of CIAC is the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles).

Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups

Towards operationalizing efforts to address the specific issue of child soldiers, an international conference entitled *Free children from war* was held in Paris, France in February 2007. The conference concluded by issuing the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* also referred to as the Paris Principles. According to the website of the Office of the Special Representative of the Secretary-General on Armed Conflict, the Paris Principles marked the culmination of discussions among representatives from 76 UN member states towards providing “guidelines on the disarmament, demobilization and reintegration of all categories of children associated with armed groups” (Office of the Special Representative of the Secretary-General on Armed Conflict s.a.). In a report entitled *Child Protection in African Union Peace Support Operations: Contextual Analysis* Save the Children and the International Bureau for Children’s Rights (IBCR) explain that: “[The Paris Principles] provide that all children associated with armed actors should be considered primarily as victims of violations of international law, not perpetrators” (2014, p.11). They also state that many African states are party to these principles. The African Union’s Department of Social Affairs states that: “[The Paris Principles] provide a helpful framework for enacting collective commitments and for giving sounder effect to obligations within the ACRWC [African Charter on the Rights and Welfare of the Child] and

the CRC OPAC, and this needs AU attention to options for supporting country-level strategic planning” (African Union 2010b, p.102). A major weakness of the Paris Principles is that it is not binding. Despite the existence of these common principles, many countries have different interpretations of who is considered to be a child soldier especially those with established traditions of recruiting children between 15 and 18 years of age into armed forces. This means that OPAC provides a greater opportunity to hold governments to account for protecting children from recruitment into armed forces or groups. A key actor working at the international level on the issue of CIAC is the UN Special Representative to the Secretary General on Children and Armed Conflict.

Special Representative to the Secretary-General on Children and Armed Conflict

In 1996, the UN General Assembly adopted Resolution A/RES/51/77 establishing the mandate of the Special Representative to the Secretary General on Children and Armed Conflict and this decision was based on recommendations in the earlier mentioned 1996 UN report by Graça Machel on the impact of armed conflict on children. The Special Representative’s principle mandate is to promote and protect the rights of all children affected by armed conflict - not just child soldiers - and to work towards ending the impunity of those who commit grave violations against them. It also includes monitoring and promoting documentation on the state of CIAC and using the information for advocacy activities at international, regional and national levels. The Special Representative also works to foster international cooperation on the issue. On 17 September 2013, the Special Representative - in partnership with UNICEF - signed an agreement with the Peace and Security Department (PSD) of the AU Commission to collaborate on protection of children affected by armed conflict in Africa. In a joint press release entitled *The United Nations Working Together with the African Union to Protect Children in Armed Conflict* Special Representative Leila Zerrougui stated that: “as the African Union is taking a larger role in the continent’s mediation and peacekeeping operations, it had become essential to make our partnership stronger” (African Union and Office of the Special Representative of the Secretary-General for Children and Armed Conflict 2013). In his 2014 report to the Security Council on *Children in Armed Conflict*, UN Secretary General Ban Ki-Moon said that: “[t]hrough the expert advice of a child

protection specialist, the [AU] Peace and Security Department, with the support of the Office of my Special Representative and UNICEF, is working to develop guidance and mainstream child protection in the policies and activities of the African Union” (Secretary General Report 2014, p.5). It is too early to tell what impact this initiative will have on how the issue of protection of CIAC is considered by the AU. The United Nations Security Council is another UN body that has put this issue high on its agenda.

The United Nations Security Council

The United Nations Security Council (UNSC) is mandated by the UN Charter to ensure international peace and security and CIAC is an issue that has featured high on its agenda. A seminar report by CCR states that: “the UN Security Council’s involvement in children affected by armed conflict has helped to uncover the political and security dimensions of an issue that had previously been tackled largely as a humanitarian concern” (2007, p.20). In 1999, it reached an agreement that **violations and abuses against children during conflict is a peace and security issue**. Since then the UN Secretary General has presented an annual report on the issue to the UNSC which has passed five resolutions on children and armed conflict including Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), and 1882 (2009). CCR (2007) points out that: “[CIAC] is now included in the Security Council’s fact-finding missions and in many country-specific reports. Child protection is also now part of the mandate of all UN peacekeeping missions, and peacekeeping personnel are trained to be sensitive to the needs of children in situations of armed conflict” (*Ibid*, p.20). Resolution 1612 called for a Monitoring and Reporting Mechanism (MRM) managed by country task forces to end impunity of parties to a conflict by gathering information on violations of international child protection standards. In the foreword to a report by Ambassador Jean-Marc de La Sablière¹⁰ entitled *Security Council Engagement on the Protection of Children and Armed Conflict: Progress Achieved and the Way Forward*, Ms. Radhika Coomaraswamy¹¹ says that: “[Resolution 1612] provides the framework for Security Council engagement on the issue of children and armed conflict” (Sablière 2012, p.4).The

¹⁰ Former Chair of the UN Security Council Working Group on Children and Armed Conflict.

¹¹ Former Special Representative to the Secretary General for Children and Armed Conflict.

MRM is expected to report on six grave violations against children identified in UN Security Council Resolution 1539 namely:

1. Killing or maiming of children
2. Recruitment or use of child soldiers
3. Rape and other forms of sexual violence against children
4. Abduction of children
5. Attacks against schools or hospitals
6. Denial of humanitarian access to children

Resolution 1612 led to the establishment of a Security Council Working Group on Children and Armed Conflict to consider reports of the MRM on which it bases its actions. It has the mandate to request other UN bodies to support the implementation of this resolution.

The Security Council Working Group and the MRM system have however not been without their challenges principally among which is a lack of intervention capability. Ambassador Sablière (2012) argues that: “the difficulty to target those who continue to commit abuses weakens the whole system” and “the architecture [of the MRM system] is fundamentally based on dialogue but it has often been found that it could not succeed with recalcitrant individuals and groups unless there was a credible threat of sanctions” (p.23). In his article entitled *Supporting the UN Security Council in Applying its Thematic Agendas to its Country - Specific Work* Swen Dornig¹² argues that: “[t]he poor record of the Security Council in mainstreaming its thematic agendas [including CIAC] into its country-specific work is mainly caused by a lack of capacity, rather than by a lack of political will” (2014, p.1). He further explains that this lack of capacity in UN Missions is due to a low number of staff and insufficient resources to implement requirements set by the UNSC’s CIAC agenda. This shows that though it is playing a lead role in putting the issue on the international agenda, the UNSC continues to face the challenge of ensuring its Resolutions related to protection of CIAC are implemented within the UN system. The challenge going forward will be to go beyond naming and shaming of groups who commit such acts to intervening in conflicts based on a need to protect children. What type of intervention and whether or not the Security Council will engage other actors are separate questions that are both beyond the scope of

¹² Second Secretary at the Permanent Mission of Liechtenstein to the United Nations.

this study. However it seems that a consensus is lacking within the UNSC on whether or not an intervention can be made on the basis of reports it receives through its MRM system. In sum, despite efforts of its working group on children and armed conflict to keep the issue high on the international agenda, ending impunity of groups and individuals who commit abuses against children continues to be a challenge at the global level.

Besides the UNSC, Chapter 8 of the UN Charter encourages settlement of 'local disputes' through regional arrangements or regional agencies before referring them to the Council. It calls on the latter to encourage the development of regional arrangements for conflict resolution. Lloyd (2002a) points out that "[t]he UN General Assembly has affirmed the value of regional agreements to promote and protect human rights, as regional treaties are best placed to consider and resolve their own human rights situations, whilst upholding cultures, traditions and histories unique to the region" (p.14). One such arrangement with which the Security Council has over the past years worked increasingly closely with is the African Union (AU). The AU Peace and Security Council states that: "Africa continues to dominate the agenda of the UN Security Council, and is host to more peacekeeping or peace support operations than any other continent" (African Union 2013d, p.2). The following section will discuss institutional and legal frameworks for the protection of CIAC that apply to AU member states.

2.2. Regional (African Union) Norms and Institutions

On 9 July 2002 the AU replaced the Organization of African Unity (OAU). The latter was founded with the principle aims of freeing Africa from colonial rule and promoting economic integration among its member states. Priorities and paradigms underpinning the OAU and AU are different as they were established at different times and influenced by events in other parts of the world. Samuel M. Makinda¹³ and F. Wafula Okumu¹⁴, in their book entitled *The African Union: Challenges of globalization, security, and governance*, say that: "without the type of changes that took place after the Cold War, it would not have been possible for

¹³ Professor of Security Studies and International Relations at Murdoch University, Perth, Australia.

¹⁴ Head of African Security Analysis Programme at the Institute of Security Studies (ISS) in Pretoria, South Africa.

African states to establish the AU” (2008, p.27). The 1980s and 1990s witnessed many armed conflicts in Africa that were mostly intrastate however some did spill over to neighboring states such as in the cases of conflicts in Rwanda, Somalia, and the Democratic Republic of Congo (DRC). During these years there were many *coup d'états* that posed a challenge to OAU in terms of whether or not it should recognize a government that comes to power through such unconstitutional means. Unlike the OAU, the AU has adopted a zero-tolerance policy to the overthrow of governments through violent or unconstitutional means. The OAU had a policy of non-interference in affairs of its member states which affected its effectiveness including its ability to address human rights violations, such as the recruitment of children to participate in hostilities. In an article entitled *The African Union: Concepts and Implementation Mechanisms Relating to Human Rights* Advocate Bience Gawanas¹⁵ argues that: “by adopting an unconditional position on non-interference, the OAU became ineffective in the promotion and protection of human rights in a decolonized and free Africa” (cited in Bösl and Diescho 2009, p.137). Despite this paradigm shift by AU towards a zero-tolerance policy *coup d'états* have occurred in recent years in Central African Republic, Guinea-Bissau, Madagascar, and Mali. The organization has adopted an interventionist policy where ‘grave violations of human rights’ and ‘crimes against humanity’ may warrant military intervention¹⁶. Such interventions do however require a mandate from the UNSC as was the case with the civil war, military coup and *de facto* secession in Mali in 2012.

Among the challenges faced by the AU since its establishment, resource/budgetary constraints have been a major problem - mainly as a result of member states defaulting on their membership payments. Writing in 2008, Makinda and Okumu pointed out that: “while the OAU had an annual operating budget of \$30 million, the AU’s is conservatively estimated at \$500 million”¹⁷ and “it is still being figure out where the AU will get this money to run its 18-plus organs” (2008, p.58). They argued that the AU’s inability to raise adequate funds from its member states made it dependent on donor funding raising concerns over its ability to act independently. According to an online article entitled *African Union seeks financial independence* by the international news network Aljazeera, on 23 May 2013 the AU Executive

¹⁵ AU Commissioner for Social Affairs (2003-2012).

¹⁶ See Article 4 (f) of the AU Constitutive Act.

¹⁷ This estimate was made in 2008.

Council adopted a budget of \$380 million for 2014 and a large percent of these funds came from the US, European Union and China (Aljazeera 2013, May 24). The current AU headquarters – which cost \$200 million to build – is a gift from China to the organization. The impact of resource constraints on the functionality of the AU with regards to its efforts to protect CIAC is discussed further in Chapter 3.

The AU has established institutions with a human rights remit and protection of children's rights has garnered increasing attention on its agenda since the 1970s. On 20 July 1979, the OAU adopted the *Declaration on the Rights and Welfare of the African Child* in Monrovia, Liberia with the aim of institutionalizing protection of children's rights. Francis Onditi¹⁸ says that this Declaration came about from recognition of the devastating impact that armed conflicts taking place in West Africa at the time were having on children. In July 1996, the OAU Council of Ministers adopted a *Resolution of the Plight of African Children in Situation of Armed Conflicts* in which they strongly affirmed that 'the use of children in armed conflicts constitutes a violation of their rights and should be considered as war crimes'. Despite this expression of political will, it took 20 years for OAU to adopt and operationalize a binding instrument on children's rights, the African Charter on the Rights and Welfare of the Child (ACRWC).

The African Charter on the Rights and Welfare of the Child

The ACRWC is a regional instrument that sets out the human rights of children in Africa - including the right to protection from armed conflicts - and obligates States Parties to ensure and respect them. It was adopted by OAU in 1990 and came into force on 29 November 1999. It has been ratified by 47 out of 54 AU member states. Murray (2004) argues that it took nine years for the ACRWC to come into force because many member states - without reading the fine print - assumed that it was no different from the CRC hence they did not see it as having any added value. At the time of writing, 7 countries that have yet to ratify it include: Central African Republic (CAR), DRC, Sahrawi Arab Democratic Republic, Somalia, Sao

¹⁸ Francis Onditi (Regional Child Protection Project Coordinator, Save the Children East Africa Regional Office) Interviewed on 9 October 2013 via Skype.

Tome and Principe, South Sudan and Tunisia. At the time of writing, armed conflicts are taking place in 4 of these countries. South Sudan has signed but not yet ratified the instrument. The ACRWC was the result of a number of factors including growing advocacy by child-focused nongovernmental organizations for a regional instrument and minimal participation of African states in the drafting of the UNCRC. Tiruneh Sinnshaw¹⁹ points out that the international community, including UNICEF, had played a role in advocating for a regional instrument for children's rights. The ACRWC includes issues of particular importance in the African context relating to children that were found to be missing in CRC including female genital mutilation, duties or responsibilities of the child, children and apartheid, and compulsory minimum age for military service. Dr Kaime (2009) observes that:

[T]he African Children's Charter's insistence on African traditions and civilisation should not be construed as a misplaced plea for a romantic rendition of some hegemonic African culture that existed in the past, but rather as a testament to the changing nature of both rights and culture and the recognition that the two concepts can be used to reinforce and complement each other (p.172).

The ACRWC is not opposed to CRC rather both instruments are complementary to each other in that they provide a framework to holistically address children's rights issues in Africa. This study will not go into the debate over which instrument provides greater protection for children as that is beyond the scope of this research and has been covered well by other studies (See Lloyd 2002a, Sloth-Nielsen 2008).

Similarly to the CRC, ACRWC includes provisions for the protection of CIAC. One among other reasons why it was adopted was because OAU member states wanted to set a compulsory minimum age for recruitment of children into armed forces at 18 and not 15 as is the case with CRC. Article 22 (2) of ACRWC states that: '[States Parties] shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child'. It also calls on them to 'respect and ensure respect for

¹⁹ Tiruneh Sinnshaw (Retired staff member of UNICEF and currently Public Health Consultant) Interviewed on 15 July 2013 in Addis Ababa, Ethiopia.

rules of international humanitarian law applicable in armed conflicts which affect the child'. As the ACRWC defines a child as anyone under the age of 18, this provision makes it compulsory on States Parties not to recruit children below this age for military service. Doek explains that "[a]n African state that has ratified both the CRC and the ACRWC must apply the more comprehensive article 22 of the ACRWC" (2014, p.192). Francis Onditi²⁰ observes that the legal framework for protection of CIAC embedded in the ACRWC clearly shows the AU's commitment on this issue. However one could argue that commitment lies more in the actions of member states rather than just their signing of legal treaties. Despite the ACRWC's provision for a minimum age for recruitment into armed forces, defining who is a child soldier is highly political and there are gray areas with national legislations having different interpretations. State Parties to this instrument are also obliged to protect CIAC - whether they are of an international or non-international nature. Furthermore, a seminar report by CCR points out that: "[the ACRWC] further reflects African realities by extending the scope of protection under the treaty to children in situations of internal armed conflicts, tension, and strife" (2007, p.15).

The ACRWC's provisions for CIAC are however not without their shortcomings. In an article entitled *Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet* Lloyd points out that: "the most major substantive omission in the Children's Charter [ACRWC] is the fact that, unlike Article 39 [of the] CRC, it fails to promote the physical and psychological recovery and social integration of a child victim of armed conflict" (2002b, p.184). In addition to this, the 223rd Meeting of the AU Peace and Security Council issued a briefing note entitled *Mitigating Vulnerabilities of Women and Children in Armed Conflicts* which states that: "[i]n terms of the mechanisms aimed specifically to address the plight of children in armed conflicts, the African Charter on the Rights and Welfare of the Child overlooks the critical role that non-state actors play in the violation of children's rights during armed conflicts" (African Union 2010a, p.6). This is a shortcoming considering the fact that a review of the UN Secretary General's annual reports to the UNSC on children and armed conflict show that many more non-state armed groups than state armed forces are listed as actors who commit grave violations against CIAC.

²⁰ Interview, 9 October 2013.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is the treaty body mandated by the AU to promote, monitor and ensure enforcement of ACRWC. The AU Department of Social Affairs points out that ‘children associated with armed forces and armed groups’ has been a priority issue on the Committee’s agenda (African Union 2010b, p.18). CIAC was one of the thematic areas discussed at its first session (Lloyd 2004). The ACERWC consists of 11 members nominated by States Parties and elected by the AU Executive Council²¹ to serve one five-year term each. According to Article 33 of ACRWC, Committee members should have ‘competence in matters of the rights and welfare of the child’ and ‘shall serve in their personal capacity’. Governments are required to submit an initial report on implementation of the ACRWC to the Committee two years after ratification and once every three years after that. In its report to the 21st session of the AU Executive Council in July 2012, ACERWC stated that “there has been slowness in the reporting of its [ACRWC] implementation as required by Article 43 of the Charter” (African Union 2012, p.1). After reviewing a report the Committee issues concluding observations - in which it advises State Parties on changes that need to be made to better implement ACRWC - and follows up on this. Similarly to the CRC Committee, ACERWC invites international, regional, and national CSOs to submit alternative reports in order to have a comprehensive overview of implementation of ACRWC. It also receives communications on violations of children’s rights from States Parties, CSOs, and children. Communications can be submitted to the Committee as long as the complainant is unable to find a remedy through national legal systems. However the fact that these decisions are non-binding negatively affects the effectiveness of the Committee and calls have been made for a judicial mechanism to address this problem. In principal it can undertake an investigative mission based on communications after which a State Party is given a hearing and a decision is issued. However in practice many member states have been unwilling to allow for such missions.

The ACERWC faces logistical and financial challenges. The OAU-AU transition process posed budgetary challenges for newly established institutions like the ACERWC (Murray 2004). For example, despite the AU’s obligations to establish a Secretariat for this Committee,

²¹ A high level decision making organ of the AU consisting of Ministers from member states.

this was not realized until mid-2007, six years from the time the first ACERWC members were elected. As a result of inadequate funding from the AU, ACERWC for many years had to depend on donations from outside sources (especially UNICEF) that came with their own conditions. Until 2013 ACERWC received its funding from the budget of the AU Commission's Department of Social Affairs where its Secretariat was based raising questions over its independence. At the time of writing, it has an autonomous budget and a Secretariat, be it small. Chapter 3 discusses these and other challenges currently faced by the Committee and how this affects its ability to ensure protection of CIAC. Prior to the adoption of ACRWC, protection of children's rights was addressed more generally through the African Charter on Human and Peoples' Rights (ACHPR).

The African Charter on Human and Peoples' Rights

The ACHPR is a regional instrument that officially put the protection of human rights - including the protection of women's and children's rights - on the OAU/AU agenda when it was adopted in 1981 and later came into force in 1986. In accordance with Article 30 of the ACHPR, the OAU established an African Commission on Human and People's Rights (the African Commission) in 1987 with 11 experts and a headquarters in Banjul, The Gambia. It is mandated to promote, monitor, and ensure enforcement of the ACHPR. States Parties are required to submit a report to this Commission on the implementation of the ACHPR every two years. It issues decisions based on these reports as well as those from National Human Rights Institutions and CSOs. However, Makinda and Okumu (2008) argue that: "major weaknesses of the Charter [ACHPR] and the Commission are that they lack enforceable remedies and mechanism(s) for encouraging and ensuring state compliance with the Commission's decisions" (p.47). With regards to children's rights, Article 18 (3) of ACHPR calls on States Parties to 'ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'. This gives the African Commission a broad remit over human rights issues affecting children, including protection of CIAC. However, Murray (2004) argues that:

Although the OAU organs paid some attention to children, their rights remained neglected for many years as they were generally not seen to be within the scope of the

African Commission on Human and Peoples' Rights in Banjul while it awaited the adoption of the additional Charter on the Child [ACRWC] and the appointment of its Committee (2004, p.163).

The AU Department of Social Affairs quotes a 2010 evaluation report on the ACERWC which states that: "the African Commission on Human and Peoples' Rights has not been evidently attuned to the rights of children in its Charter or in its deliberations" (African Union 2010b, p.120). The relationship between the African Commission and ACERWC will be further explored in Chapter 3. The former has Special Rapporteurs who deal with specific human rights issues including its Special Rapporteurs on the Rights of Women and on Refugees, Internally Displaced Persons (IDPs), Migrants and Asylum Seekers who both have mandates that include protection of CIAC. In support of this, a seminar report by CCR points out that they: "can effectively deal with issues particular to African children such as the specific impact of armed conflict on girls; post-conflict peacebuilding and the reintegration of girls previously associated with armed forces; as well as issues of child refugees, family reunions, and the protection of non-accompanied children" (2007, p.22). Given the gravity of the situation of CIAC in Africa, as described in Chapter 1, the absence of a Special Rapporteur dedicated to the issue of CIAC or child rights in general seems to be a shortcoming of the African Commission. Similarly to the ACERWC, the ACHPR's decisions and recommendations are non-binding and for many years this was a barrier to effective enforcement of human rights which led to calls for a judicial mechanism with powers to make such binding decisions, hence the establishment of the African Court on Human and Peoples' Rights (the African Court).

The African Court on Human and Peoples' Rights

The African Court is an AU legislative body that can have a significant influence on the protection of CIAC. It has jurisdiction over all cases and legal disputes related to interpretation and application of all human rights-related instruments that have been ratified by AU member states. Although it was established in 1998 - through an additional protocol to the ACHPR - the African Court only entered into force about 6 years later on 25 January 2004. It consists of 11 judges and is based in Arusha, Tanzania, thousands of miles away from the African

Commission in the Gambia. A web page on the Open Society Justice Initiative²² website entitled *Fact Sheets: African Court on Human and Peoples' Rights* points out that the protocol establishing this Court has only been ratified by 26 out of 54 AU member states (Open Society Justice Initiative 2013, June). The long wait to establish the Court and the fact that about half of AU member states have yet to ratify its Protocol indicates its contentious nature. This seems to be influenced by the fact that its decisions are final and binding unlike ACERWC and the African Commission. The Protocol did not include ACRWC as part of its jurisdiction. A 2010 report by Save the Children Sweden and Plan International²³ entitled *Advancing Children's Rights: A Guide for Civil Society Organizations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child* argues that: "there is a strong case for arguing that the ACERWC is an African Intergovernmental Organisation and as such capable of submitting a case" (2010, p.87)²⁴. Decisions of the African Court can be enforced by the AU Assembly of Heads of State and Government (AU Assembly) which gives it political clout to influence the AU agenda. This is therefore an ideal platform for promoting the protection of CIAC. However, this supposes that political will on the part of AU member states exists to implement the African Courts decisions which may not be the case given the fact that 28 countries are not parties to its Protocol and recent efforts to curtail its powers such as the declaration that no sitting Head of State may be tried for any crimes.

The future of the African Court at the moment is uncertain as an AU Summit of Heads of State and Government in July 2004 decided to merge it with the Court of Justice of the African Union - the main judicial organ of the AU - to form one Court, the African Court of Justice and Human Rights (ACJHR)²⁵. The new court has yet to be established as its Protocol has only been ratified by 5 out of 54 AU member states (as of February 2014) which indicate the amount of time and advocacy required before it is realized (see African Court Coalition 2014, July 12). The rationale for merging the two Courts was to ensure efficiency, avoid duplication of efforts and overlapping of jurisprudence, and to reduce costs of operating two

²² Open Society Justice Initiative is a program funded by the Open Society Foundations - a philanthropic organization based in the U.S.A - which works on litigation, advocacy and research on human rights abuses.

²³ Save the Children and Plan International are international child rights organizations.

²⁴ African International Organizations are one category of institutions that can present cases before the African Court on Human and Peoples' Rights.

²⁵ The Protocol on the Statute of the ACJHR was adopted at the Eleventh Ordinary Session of the AU Assembly in Sharm El-Sheikh, Egypt on 1 July 2008 (African Union, 2008).

Courts with similar mandates (Murray 2004, Sloth-Nielson 2008). The Protocol for the ACJHR stipulates that it will consist of 16 judges with an equal geographical representation from all regions of Africa.

The ACJHR seems to have benefited indirectly from the earlier mentioned controversies surrounding the ICC's targeting of a sitting African Head of State. On 12 October 2013, an extraordinary session of the AU Assembly decided that it was important to 'fast track' efforts to expand the capacity of ACJHR in order for it to have the capacity to try cases of genocide, war crimes, and crimes against humanity - essentially becoming the African equivalent of the ICC. The fact that actions by the ICC indirectly led to calls for greater support for an AU initiative and that an extraordinary session was held to decide on this issue illustrates how institutions like ACJHR depend on political will of member states to function. Whether the controversy over jurisdiction of ICC persuades more AU member states to adopt and ratify the Protocol on ACJHR is left to be seen. The Protocols for the African Court on Human and Peoples' Rights and ACJHR both state that nongovernmental organizations or individuals cannot petition them without the consent of the government under question. This shows a lack of political will by member states to allow for a human rights system that can assure accountability for human rights violations. Another AU institution that has an important role to play in the protection of CIAC is its Peace and Security Council (PSC).

The AU Peace and Security Council

The PSC is the AU organ with the mandate to address peace and security issues on the continent, including CIAC. Since the launch of the AU, peace and security has been a major area of work for the organization²⁶. According to the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, the PSC is 'a standing decision-making organ for the prevention, management and resolution of conflicts' and 'the PSC shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa'. It consists of 15 members elected by the AU Executive

²⁶ This can partly be attributed to an increasing recognition by member states of the damaging impact of conflicts on socio-economic development.

Council with 5 serving for 3-year terms and the remaining 10 for 2 years. Elections are designed to ensure equitable representation of all regions of Africa. The PSC is supported to carry out its mandate by a Panel of the Wise, a Continental Early Warning System, an African Standby Force (ASF) and a Special Fund. Collectively these bodies make up the African Peace and Security Architecture (APSA). In its report to the 21st Session of the AU Assembly, the PSC stated that: “[i]n spite of the progress achieved so far, the APSA has not yet been fully operationalized” and “the inability of the AU to intervene in Mali in mid-January 2013, to counter the offensive then launched by the criminal and terrorist groups against the positions of the Malian army, is indicative of the long way we still have to go” (African Union 2013d, p.3). These comments are in reference to challenges faced in establishing the ASF through collaboration with Regional Economic Communities (RECs). Where do CIAC feature in APSA? Is the ACERWC involved in the work of bodies under APSA? Chapter 3 will attempt to address these and other questions on how protection of CIAC features in the work of APSA. The PSC also has a Secretariat that operates as a division within the African Union Commission’s Peace and Security Department (PSD) in Addis Ababa, Ethiopia.

The PSC Protocol requires that human rights are mainstreamed in the work of all AU organs²⁷. In an article entitled *A critical appraisal of the PSC’s mandate with respect to human rights*, Dr Solomon A. Dersso²⁸ explains that: “[the PSC Protocol] can be considered both as mandating and demanding AU institutions, particularly the PSC and its supporting bodies, to integrate human rights into all their conflict prevention, conflict management and conflict-resolution initiatives and processes fully and appropriately” (cited in Murithi and Lulie 2013, p.202). The Protocol also gives PSC the mandate to monitor the state of CIAC and oversee their reintegration into society in post-conflict situations. According to a seminar report by the CCR:

[T]he PSC has a mandate to undertake peacebuilding activities through such programmes as the reintegration of child soldiers, the resettlement and reintegration of

²⁷ With regards to human rights, Article 7 of the PSC Protocol gives it the power ‘to follow up on progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms and respect for the sanctity of human life and international humanitarian law by member states’.

²⁸ Head of the Peace and Security Council Report at the Institute for Security Studies (ISS), an African human security think tank with its headquarters in Pretoria, South Africa.

refugees and internally displaced persons, and assistance to vulnerable persons, including children (2007, p. 23).

The fact that human rights are part of PSC's mandate can, on its own, be considered as an opportunity to address the plight of CIAC. However, on the PSC's track record on dealing with human rights issues, Dr Dersso (2013) observes a gap between its mandate and implementation on the ground and says that: "[PSC's] approach to issues of human rights in the context of a crisis has not been systematic" (*Ibid*, p.210). On the issue of CIAC, the 364th Meeting of the PSC stated that: "whilst the necessary instruments for the protection of women and children in armed conflict and for the promotion of their rights exist, the pace of implementation of those instruments is deplorably slow. Council accordingly, called for their full implementation" (African Union 2013b, p.1). This indicates the PSC's support for AU's human rights instruments. Chapter 3 will discuss the relationship between PSC and ACERWC as well as other AU bodies with a mandate related to protection of CIAC. Though PSC is a principal organ of the AU's work on peace and security, it cannot make the final decision to intervene in an armed conflict even for humanitarian reasons. It first has to make a recommendation to the AU Assembly of Heads of State and Government which is the only organ that can authorize an intervention. This differs from the UN structure where the UN Security Council has decision making power even though the veto powers of its permanent members is more often than not used to challenge calls for military interventions. The relationship between the PSC and AU Assembly once again reinforces the importance of political will of member states.

The AU Executive Council and the AU Assembly of Heads of State and Government

The AU Executive Council and the AU Assembly are at the apex of the AU organogram. The former consists of Ministers - usually Ministers of Foreign Affairs. It decides on reports, decisions, and recommendations made by ACERWC, the African Commission, as well as all other AU treaty bodies and organs. The ACERWC submits a report on all its activities to the Executive Council which in turn presents it to the AU Assembly. In its report to the 21st Session of the Executive Council ACERWC said that:

[It] is requesting the Executive Council to urge countries that have not yet ratified the Charter and those that have not submitted their reports on the implementation of the Charter to accelerate the process. The Executive Council should further urge Member States to respond positively to Committee requests to undertake field missions” (African Union 2012, p.8).

This signifies both the political clout of the Executive Council and the challenges faced by ACERWC in getting member states to submit reports and agree to its investigative field missions. Any decisions by the Executive Council to support the implementation of the ACERWC’s mandate can only be enforced by the AU Assembly. The latter is therefore the supreme decision making organ of the organization. Lloyd on her part argues that: “the African Children’s Charter fails to state what the Assembly should do with them [ACERWC recommendations]” (2002a, p.26). The AU Assembly is also the only body with the authority to enforce judgments of the African Court on Human and Peoples’ Rights, including those related to children’s rights. This structural configuration for decision-making means protection of CIAC is highly dependent on political will of AU member states. Two organs of the AU with political clout to influence decision-making at the AU Assembly level are the AU Commission and the Permanent Representatives Committee (PRC).

AU Commission and Permanent Representatives Committee

The Permanent Representatives Committee (PRC) plays an important role in setting the AU agenda and hence one that can influence how much attention is given to the issue of CIAC. It works under the instruction of the Executive Council and is made up of member state’s Ambassadors accredited to the AU. It is responsible for preparing the program of work of the Executive Council and as it is made up of Ambassadors it is instrumental in linking the AU agenda with that of member states.

Another organ that can influence where CIAC lies on the organization’s agenda is the AU Commission that serves as the Secretariat of the organization. It is charged with carrying out all operational matters of the AU including following up on implementation of decisions of

other organs of the organization. It is made up of a Chairperson, Deputy Chairperson, eight Commissioners and staff members. The Commissioners manage different portfolios of the AU Commission including Peace and Security, Political Affairs, and Social Affairs. The AU Commission is charged with promoting harmonization between policies and programmes of the AU and RECs. With regards to its work on human rights, Gawanas points out that: “in carrying out their mandates, all portfolio Departments in the AU Commission are required to mainstream human rights into their programmes; therefore, the issue of human rights is no longer limited to the African Commission on Human and Peoples’ Rights” (2009, p.155). Aside from the AU, another regional framework for protection of CIAC is RECs.

Regional Economic Communities

RECs are sub-regional organizations that serve as regional trading blocs as well as a mechanism for coordinating social, political, and military integration. Some RECs were established before the OAU was set up while others evolved independently from the latter’s involvement. The AU recognizes 8 RECs that are by and large based on geography of different regions including:

1. Arab Maghreb Union (AMU)
2. Common Market for Eastern and Southern Africa (COMESA)
3. Community of Sahel-Saharan States (CEN-SAD)
4. East African Community (EAC)
5. Economic Community of Central African States (ECCAS)
6. Economic Community of West African States (ECOWAS)
7. Intergovernmental Authority for Development (IGAD)
8. Southern African Development Community (SADC)

Article 16 of the PSC Protocol states that: ‘Regional Mechanisms are part of the overall security architecture of the Union’. However, Makinda and Okumu argue that: [t]he uncontrolled establishment of RECs has created serious inefficiencies, duplication, unintended overlap, and even dissipating efforts and scarce resources that should be frugally

directed towards the goal of building an effective African Union” (2008, p.53). RECs are however playing an increasingly critical role in APSA in terms of anticipating, preventing or mediating conflicts within their respective regions. They also play a role in protection of CIAC. According to a seminar report by the CCR:

[RECs] such as ECOWAS [Economic Community of West African States] and SADC [Southern African Development Community] have begun to implement the commitments that they have made to children in the context of their own peacekeeping, peacemaking and peacebuilding initiatives. At the SADC level, for instance, a Protocol on Control of Firearms, Ammunition and Other Related Materials was adopted in 2001 and has the potential to contribute to the protection of children in war-affected societies (2007, p.25).

The PSC states that: “relations with the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution (RECs/RMs) have not yet reached the degree of harmony and coordination prescribed by the PSC Protocol” (African Union 2013d, p.3). The PSC’s efficiency greatly depends on the level of coordination it has with RECs. This relationship will influence whether or not the former will be successful in dealing with human rights issues such as protection of CIAC.

This chapter has shown that an institutional and legal framework exists for the protection of CIAC in Africa and that there is a consensus that children need special protection in these situations. It is evidently clear that political will of member states plays a crucial factor in the functionality of the AU as is the case with other regional organizations. Equally important is whether or not the AU has the institutional and structural capacities to address the issue of protection of CIAC, the subject of the following chapter.

Chapter 3 Does the AU have the capacity to protect children in armed conflicts?

The existence of institutional and legal frameworks is not enough to ensure the protection of children in armed conflicts (CIAC) in Africa. Based on an analysis of data from in-depth interviews with key informants and literature using grounded theory methodology (GTM) this study found that the AU lacks the institutional and structural capacity to protect CIAC and a determining factor is a lack of political will among many of its member states to deal with the issue. The theory developed from this study's findings is that the AU's lack of capacity to protect CIAC is both a manifestation and a product of the issue not being high on its agenda. If the issue is at the apex of the AU's list of priorities, the organization's lack of capacity in this area would have to be addressed and violations of children's rights in armed conflicts would not be an afterthought. Putting this issue high on the AU agenda does not mean deprioritizing other issues such as terrorism or famine rather it should be considered as one among other critical factors to the success of its peace and security efforts.

3.1. Children in Armed Conflicts and AU Priority Setting

The AU lacks an agenda on CIAC and this is a major factor for why the issue is not among the organization's top priorities. One of the findings of this study is that there seems to be a problem with setting priorities in the AU as children's rights in general is seen as being of secondary importance. Tiruneh Sinnshaw¹ suggests that: "what it [AU] does and how it behaves and how it perceives situations is almost how it is done in each country. It is the sum total of the behavior of each country that reflects itself in the AU". This means that if there is lack of political will on the part of member states to address the issue it is unlikely that the AU will approach it any differently. Chikezie Anyanwu² suggests that this could be addressed if protection of CIAC was high on the agenda of the AU Assembly which has the power to make the institutional changes needed. However, decision making at that level is highly political and Francis Onditi³ suggests that some countries use their contributions to the organization to

¹ Interview, 15 July 2013.

² Chikezie Anyanwu (Child Protection Adviser, Plan International) Interviewed on 17 July 2013 in Addis Ababa, Ethiopia.

³ Interview, 9 October 2013.

influence the agenda to cover up human rights violations including those committed against children. Tiruneh Sinnshaw argues that there is “general inertia and ignorance” to the special needs of CIAC and this is preventing the AU from taking action on the issue. Chikezie Anyanwu agrees and points out that the organization has no information about how children are being affected by conflicts in Africa including those in Mali, Democratic Republic of Congo (DRC) or Central African Republic. At the Second Pan-African Forum on Children held in Cairo, Egypt from 29 October-2 November 2007, Ministers of AU member states responsible for children’s rights and wellbeing issued a *Call for Accelerated Action on the Implementation of the Plan of Action Towards Africa Fit for Children (2008-2012)* which states that ‘[they request the] AU to develop an additional protocol to the ACRWC on elimination of involvement of children in armed conflict’. At the time of writing – which is 7 years from when this request was made - no such additional protocol exists. The AU Department of Social Affairs argues that this additional protocol should be a priority issue for the AU and ACERWC. In addition of this, it argues that: “neither instrument [ACRWC and the CRC’s Optional Protocol on the Involvement of Children in Armed Conflict] sufficiently addresses the core elements of post-conflict actions and peace-building efforts and the protection of children on the one hand and their effective participation on the other” (2010b, 115). Another challenge related to priority setting in the AU is that protection of CIAC has not been integrated in to its peace and security agenda.

The AU Peace and Security Council (PSC) - the lead body in the African Peace and Security Architecture - has not integrated protection of children as part of its work on peace mediation, conflict management and peace building. Dr Dersso (2013) argues that there is a gap between its mandate and implementation in that human rights have yet to be mainstreamed into its activities. In June 2012, the AU Executive Council issued decisions EX.CL/Dec.712 (XXI) which requested ‘the Permanent Representative Committee (PRC), the Peace and Security Council (PSC) and the Regional Economic Communities (RECs) to take into account the rights of the child in their agenda and cooperate actively with the Committee [ACERWC]’. Though such decisions can be considered as an opportunity, the use of words such as “requests” and “take into account” indicate that decision makers still do not appreciate the seriousness of the issue and the level of response it requires of them. Since 2013, PSC and

ACERWC have organized joint sessions to discuss collaboration around protection of CIAC and - at the time of writing - efforts are underway to institutionalize their relationship. Though this can be said to provide an opportunity to put this issue on the peace and security agenda, it is too early to tell what progress has been made as it is a new initiative and it takes time for changes to be effected within a bureaucratic and political organization such as the AU. Dr Solomon Dersso⁴ suggests that: “[t]here is a need to develop systematic guidelines for ensuring that issues of children’s protection are included and are adequately reflected whenever the African Union and the Peace and Security Council designs mediation efforts, peacemaking initiatives, [and] whenever the AU deploys peace support operations”. Such an approach may however prove difficult at the moment as the AU has a more reactionary approach to addressing conflicts rather than a proactive one that equally invests in prevention.

Compared to child rights, there has been greater success in integrating gender-related issues on the AU agenda. According to a press statement of its 364th meeting, the PSC commended the AU Commission for its work on gender mainstreaming in its Peace and Security Department (PSD) (African Union 2013e). It also stated that: “[r]esponsibility for the implementation of a gender policy must be diffused across the organization structure, rather than concentrated in a small central Unit” (*Ibid*, p.2). For protection of CIAC to be realized, children’s rights in general should be similarly diffused in the AU rather than everything being shouldered by the ACERWC with 11 members and 5 Secretarial staff. The AU Peace and Security Council (PSC) holds an annual open session on the situation of women and children in situations of armed conflict where it discusses these issues with other AU bodies, international organizations, and CSOs. However a review of PSC press statements on these sessions indicates that discussions are primarily on addressing violence against women and gender mainstreaming in the AU with little attention being given to specific issues of children’s vulnerabilities and protection. They also show that there is a tendency to group women and children’s issues together which shows a lack of appreciation for the special needs of the latter. There was an instance where a member of ACERWC complained to organizers of one

⁴ Solomon Dersso, PhD (Head of the Peace and Security Council Report, Institute of Security Studies) Interviewed on 12 July 2013 in Addis Ababa, Ethiopia.

of these sessions for not inviting the Committee⁵. Mary [pseudo]⁶ says that there are some officials within the AU who do not know that the ACERWC even exists. This points to another challenge which is a lack of synergy between AU bodies with mandates that include protection of CIAC, which is further discussed later in this Chapter. Another challenge that prevents this issue from being high on the AU agenda is structural weaknesses.

3.2. Structural Weaknesses

The AU lacks a structure to deal with the issue of CIAC and this militates against it being high on its agenda. One structural weakness can be found in its practice of building new institutions with human rights mandates instead of strengthening those that already exist such as the ACERWC. Gawanas agrees and argues that: “the AU continues to create more instruments and mechanisms with limited resources and overlapping jurisdictions, thus limiting their role in providing effective oversight and enforcement” (2009, p.161). This means that bodies such as the ACERWC have to compete for resources with new institutions and there is an increased likelihood of a duplication of efforts. A press statement of an open session during the 434th meeting of the PSC held on 8 May 2014 on the theme of *Children in Armed Conflicts in Africa: Briefing by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)* states that: “[p]articipants and Council [PSC] recommended the appointment of an AU Special Envoy for Children in Africa to sustain efforts in the protection of children’s rights in the context of armed conflict on the continent” (African Union 2014b, p.3). This title suggests a broader mandate than just a focus on CIAC which begs the question of how much attention can he/she give to this issue with competing priorities such as education, health, water and sanitation, harmful cultural practices, among others. As compared to the ACERWC this Special Envoy would work under the Chairperson of the AU Commission giving him/her greater access to decision makers and a permanent presence at AU Headquarters. The AU’s decision on this recommendation will be an indication of the level of importance it gives to children’s rights in general. The AU Commission Chairperson already has a Special Envoy for Women, Children, and Armed Conflicts, Bineta Diop,

⁵ This is a personal observation made by the author as a participant at this meeting.

⁶ Mary [Pseudo] (Staff member of an international organization) Interviewed on 10 July 2013 in Addis Ababa, Ethiopia.

however in practice her work is mainly focused on promoting women's rights and gender mainstreaming in the AU. The fact that this position already exists could be grounds for the AU to reject the appointment of another Special Envoy for children. Hence it will be a test of the synergy and cooperation between PSC and ACERWC in that they will have to jointly advocate for the position with the AU Executive Council. Ultimately this initiative could fail without political backing from member states especially if some consider it to be a tool for exposing their failures in the area of child rights.

Given the situation of CIAC in Africa and poor levels of child wellbeing in general, addressing these issues seems to be too much to ask of a Committee of 11 members and a Secretarial staff of 5. Tiruneh Sinnshaw⁷ suggests that given the fact that children make up more than 30 percent of Africa's population the AU needs to establish a child rights department. He argues that: "what lesser role can such an organization [AU] play than have something in the forefront and specifically charged to look into the situation of children, to protect them, to advocate for their rights, education and survival". The AU Commission has a Directorate of Women, Gender and Development which has been able to designate gender experts in the AU Commission's Peace and Security and Political Affairs Departments in an effort to promote gender mainstreaming. Similarly, given political will of the AU Assembly, a Department for Children's Rights could be established. This is not to suggest that this would be a panacea to all problems rather it would provide the AU with the structure that has been lacking so far to address children's rights issues, including protection of CIAC.

Another opportunity to address the AU's structural deficiencies would be for the PSC to learn from the UN Security Council which set up a dedicated working group on CIAC, issued resolutions and is ensuring that the issue is integrated in the UN's peace and security operations. In support of this, Article 8 of the PSC Protocol states that: '[t]he Peace and Security Council may establish such subsidiary bodies as it deems necessary for the performance of its functions'. Franco Wandabwa⁸ suggests that: "measures that the AU can take in the protection of children in armed conflict are that issues of protection of children in

⁷ Interview, 15 July 2013.

⁸ Interview, 25 July 2013.

armed conflict are deliberately integrated within its peacekeeping and post-conflict redress docket. That is not the case right now”. Similarly, the issue has yet to be integrated into the AU’s conflict prevention mechanisms - including its conflict early warning system - and more generally in the *modus operandi* of APSA (African Peace and Security Architecture). A closely related challenge is a lack of synergy between AU bodies.

A lack of synergy exists among AU human rights bodies and between them and other institutions with a mandate to ensure protection of CIAC. Article 42 of the African Charter on the Rights and Welfare of the Child (ACRWC) mandates the ACERWC to ‘cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child’. The PSC is among these institutions that it can cooperate with. Catherine Wanjiru Maina⁹ says that: “[the Peace and Security Department] had been requested to invite the Committee [ACERWC] when they go to areas of post-conflict but that has not happened”. Chikezie Anyanwu¹⁰ says there is little synergy between the AU’s Continental Planning Element of the African Standby Force - which is charged with planning and managing AU peace support operations - and the ACERWC as well as other human rights bodies. Save the Children Sweden and Plan International (2010) on their part suggest that:

The Committee [ACERWC] should be encouraged to work with the different units of the PSC on issues around the prevention of conflict, monitoring of the rights of children caught up in armed conflict, supervision of child reintegration processes and promotion of child rights within regional peace-building and post-conflict reconstruction processes (p.94).

As mentioned earlier, PSC and ACERWC have prepared a plan of action on how to collaborate better for protection of CIAC however as this only began in 2013 it is too early to assess what impact this has made. Jean François Basse¹¹ on his part says that: “[t]he need to institutionalize this collaboration remains critical” and “[i]t is for this reason that this plan of

⁹ Catherine Wanjiru Maina (Senior Social Worker, Secretariat of the African Committee of Experts on the Rights and Welfare of the Child) Interviewed on 9 June 2013.

¹⁰ Interview, 17 July 2013.

¹¹ Interview, 1 September 2013.

action will be of significant importance, particularly in ensuring that these two institutions increase their collaboration in a more formalized way”. Greater synergy through institutionalized collaboration between ACERWC and APSA - particularly the PSC - could contribute to putting protection of CIAC high on the AU agenda, which may ultimately result in greater security for them.

Challenges of lack of synergy also exist with the African Standby Force (ASF). In a 2014 report entitled *Child Protection in African Union Peace Support Operations: Contextual Analysis* Save the Children and the International Bureau of Children’s Rights (IBCR) observe that: “the lack of coordination between peace support operations (PSO) actors remains a problem” and “this is particularly the case in the Eastern and Western African sub-regions, where the operationalization of the standby forces has not yet led to a corresponding reduction in children exposed to abuse and rights violations” (2014, p.4). This means that the ASF is not yet prepared to address protection of CIAC. The lack of structure in the AU to address CIAC is preventing the issue from being high on its agenda and this will not change unless there is an openness to review and reform institutional frameworks.

Problems of synergy also exist between the African Commission on Human and Peoples’ Rights (African Commission) and the ACERWC. Recommendations by the Forum on the Participation of NGOs in the 50th Ordinary Session of the African Commission on Human and Peoples’ Rights (ACHPR) and 24th African Human Rights Book Fair ¹² stated that: “[they are] deeply concerned that despite ACHPR Resolution 144 in 2009 calling for greater collaboration between the African Commission and the ACERWC, this has not been effectively implemented to yield results for the children on the African continent” (African Centre for Democracy and Human Rights¹³ 2011, October 31). At the time of writing, the ACERWC is drafting a collaboration plan and harmonizing its rules of procedure with the African Commission and the African Court on Human and Peoples’ Rights however as this is still in the planning stages it is yet unclear what type of framework will emerge and whether it addresses the above concerns raised by the Forum on Participation of NGOs. In an article

¹² The Forum was held from 19th-21st October 2011 in Banjul, The Gambia.

¹³ Non-governmental pan-African organization working on promotion of human rights in Africa.

entitled *How to guarantee credence: Recommendations and proposals for the African Committee of Experts on the Rights and Welfare of the Child*, Lloyd points out that: “[a]lthough, the two bodies [ACERWC and ACHPR] are independent, close collaboration will ensure that issues relating to children will be dealt with expediently and with the requisite support from all human rights institutions” (2004, p.37). Though such initiatives can improve general synergy between these human rights bodies, an AU structure for addressing CIAC is still lacking and this relates to the earlier mentioned challenge of setting priorities. Furthermore, these initiatives can only be sustainable if there is political backing from member states for a stronger and more efficient human rights system. Chikezie Anyanwu¹⁴ agrees and argues that: “it should go all the way high up in the AU decision making structure with regards to ensuring that synergy and alignment is a *modus operandi* of the AU”. He further points out that without a change of direction from the apex level, AU bodies with a mandate to ensure protection of CIAC will work in silos and be “territorial”. The AU’s structural weaknesses to address the plight of CIAC are linked with challenges of resource and capacity constraints.

3.3. Resource and Capacity Constraints

Resource and capacity constraints have been a persistent dilemma ever since the AU was established (Makinda and Okumu 2008). It negatively affects ACERWC’s overall effectiveness, including its capacity to advocate for protection of CIAC to be high on the AU agenda¹⁵. A briefing note of the PSC’s 223rd Meeting states that: “[ACRWC] fails to include mechanisms that ensure that member states mobilize resources to ensure that children’s rights are protected. This has proved a challenge for the African Committee [ACERWC] which has been plagued by insufficient funding” (African Union 2010a, p.6). However one could pose the question as to whether member states would have ratified a treaty with such a mechanism for mobilizing resources? Furthermore, given member states track record of not submitting state party reports to the ACERWC it is difficult to imagine that they would make such a commitment. The AU Department of Social Affairs on its part reports that: “[ACERWC] operates under conditions of insufficient resources and weaker secretarial, policy and review

¹⁴ Interview, 17 July 2013.

¹⁵ It was not possible to access budget figures for specific AU departments.

capacities” (African Union 2010b, p.18). Lloyd (2004) says that the AU has not fulfilled many commitments that it has made to support the work of the ACERWC. She further argues that: “[t]he principal threat to the effectiveness, efficiency and credibility of the African Committee [ACERWC] is the action, or rather inaction, of the OAU/AU and the lack of resources being allocated” (2004, p.36).

Chikezie Anyanwu¹⁶ suggests that low budget allocation by the AU for the ACERWC is a reflection of the level of importance the organization attaches to issues of children’s rights. With budgetary constraints in the AU, the African Commission and ACERWC have had to compete over scarce resources. Gawanas (2009) observes that: “[g]iven the scarcity of resources [in the AU] and to avoid duplication of effort, the question always remains whether there will be adequate funding to ensure the effectiveness of all these mechanisms” (p.156). She also points out that some AU officials question whether there is a need to fund a separate child rights committee when the African Commission already exists (*Ibid*). This type of argument again illustrates the challenge of changing perceptions on the importance of children’s rights and why it is difficult to put them high on the AU agenda. Chikezie Anyanwu argues that the AU allocates over 60 to 70 percent of its budget to its bodies working on peace and security while the ACERWC gets almost nothing. He further elaborates by saying that: “[i]t is on record that in the year 2012 there was no funding made available for even the statutory meeting of the African Committee on the Rights and Welfare of the Child. That shows you how much importance and priority African leaders and decision makers place on the Committee itself”. This once again illustrates a common thread in this study which is a lack of political will on the part of many AU member states to support work and advocacy on children’s rights.

The ACERWC was granted an autonomous budget in 2013 and this was achieved 5 years after the Executive Council instructed the AU Commission to take this action (see African Union 2011). Though this gives the Committee some sense of predictability, it continues to lack the resources it needs to effectively carry out its mandate. In a video recording of his

¹⁶ Interview, 17 July 2013.

opening remarks to the 23rd Session of the ACERWC held from 9-16 April 2014, the Committee's Chairperson said that:

Unfortunately, as far as our program budget for 2014 is concerned there are indications that we might not get it from the African Union. The Committee once again has to rely on the kind support from partners and in particular I would like to express the support provided by UNICEF, Plan International, Save the Children and ACPF in holding this session. However on a positive note, for the program [operational] budget of the Committee we have the contribution from member states which is not a significant amount but is a positive move in taking responsibility to the activities of the Committee in the foreseeable future (African Union 2014, April 9).

Such dependence on support from external actors may raise questions as to the ACERWC's credibility and independence. Without political will and adequate funding to support the ACERWC it cannot be effective in monitoring the situation of CIAC and advocating for their protection.

The ACERWC lacks the capacity it needs to carry out its mandate - including ensuring protection of CIAC - and a lack of adequate resources is a major contributing factor in this regard. Chikezie Anyanwu¹⁷ argues that: "[t]here are 11 members [in the ACERWC] and we have 54 African countries. How do they expect 11 members to cover 54 African countries with only three dedicated staff? It's not possible". It has a lean Secretarial staff of 5 people at the AU Headquarters in Addis Ababa, Ethiopia. Francis Onditi¹⁸ observes that a lack of technical capacity in the ACERWC is "a limiting factor". The AU Department of Social Affairs reported in 2010 that the ACERWC had not addressed any of the communications - on violations of children's rights - submitted to it at the time including one that it received 5 years earlier regarding the Ugandan government's lack of response to the plight of children abducted by the Lord's Resistance Army (LRA). Michael [pseudo]¹⁹ says that the Ugandan government

¹⁷ Interview, 17 July 2013.

¹⁸ Interview, 9 October 2013.

¹⁹ Michael [Pseudo] (Staff member of a regional organization) Interviewed on 4 July 2013 in Addis Ababa, Ethiopia.

has used its influence in the AU Assembly to block the ACERWC's efforts to investigate the matter. Save the Children Sweden and Plan International (2010) observe that:

The Committee conducted a fact-finding mission to Northern Uganda in 2005 which was presented by the AU Commission to the Executive Council, the Permanent Representatives Committee (PRC) and the AU Assembly. However the report was not published by the AU Assembly and therefore it was not widely disseminated or acted upon (p.76).

As mentioned in Chapter 2 decisions or recommendations of ACERWC are not binding and this is a major barrier to the implementation of the ACRWC. Gawanas (2009) criticizes human rights mechanisms in Africa as being "toothless". As she served as AU Commissioner for Social Affairs for 9 years that seems to be enough time for her to assess the effectiveness of AU's human rights bodies.

One opportunity to strengthen the capacity of ACERWC is that the AU Executive Council has been requested to allow for its members to serve more than one term and some have called for the position of Chairperson to be permanent (African Union 2014, April 9²⁰). This could help to ensure continuity of work and reduce the number of induction training sessions required for new members. However, appointment of Committee members - who are nominated by member states - is political hence this proposal may face some resistance in the Executive Council and AU Assembly. Another opportunity is an offer that has been made by the Government of Burkina Faso for the ACERWC to establish its headquarters there. Vincent Ochilet²¹ suggests that: "they [ACERWC] need to have a headquarters. It will not solve everything but if they had a headquarters it may help them to settle better". Would this help to improve its synergy with the African Commission on Human and Peoples' Rights in the Gambia? At the time of writing, the ACERWC is conferring with the AU Commission on this offer.

²⁰ This was mentioned in a video recording of a speech by the ACERWC Chairperson during the Committee's 23rd Ordinary Session.

²¹ Interview, 19 July 2013.

Capacity constraints in AU bodies working on peace and security to effectively address protection of CIAC is a reflection of the low status that the issue is accorded on the AU agenda. Chikezie Anyanwu²² argues that: “the entire Department of Peace and Security [PSD] of the African Union [Commission] has very limited capacity when it comes to child protection in situations of conflict and in emergencies and that is a fact”. The PSD has a lot of influence in setting the peace and security agenda as it is permanently based at AU headquarters and maintains close contact with member states while the PSC only meets for its statutory meetings and during crisis situations. Therefore this Department’s lack of capacity in the area of protection of CIAC suggests that it is not high on its agenda and therefore not a priority in its advocacy activities. Similarly to ACERWC, the PSC faces capacity constraints in dealing with the issue of CIAC. In support of this, Save the Children Sweden and Plan International (2010) argue that: “[t]he PSC’s knowledge of how conflict affects children is limited” (p.94)²³. Furthermore, Save the Children and IBCR (International Bureau for Children’s Rights) observe that: “[t]he Proposed Guidelines for the Protection of Civilians in African Peace Support Operations [led by the PSC], currently under review, make no specific mention of African or other legal frameworks explicitly focused on child protection or child’s rights” (2014, p.11). This links to earlier mentioned challenges of setting priorities and synergy.

Although AU peace support operations have guidelines on protection of civilians this has not achieved greater protection for children. The Africa led Intervention Support Mission to Mali (AFISMA) - the AU’s intervention in the civil war, military coup and *de facto* secession in Mali that erupted in March 2012 - lacked the capacity and training to protect children during that crisis. According to Save the Children and IBCR (International Bureau for Children’s Rights), “[a]s late as June 2013, no Standard Operating Procedure (SOP) on how to deal with children affected by armed conflict were in place for any of the armed forces operating in Mali, nor had the Malian Armed Forces or AFISMA troops received substantial child protection training” (2014, p.10). They also argue that the Mali crisis showed that the African Standby Force

²² Interview, 17 July 2013.

²³ This is a quote from a report entitled *Advancing Children’s Rights: A Guide for Civil Society Organizations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child* written by staff of these organizations working in Africa and who have a working relationship with the AU.

(ASF) was not prepared to address armed conflicts on the continent. Human Rights Watch issued a report in September 2014 which accuses the African Union Mission in Somalia (AMISOM)²⁴ of sexual abuse and exploitation of women and teenage girls. Though issuing guidelines or giving training on child protection may not prevent such human rights violations from happening, it could set a standard procedure for protecting CIAC. Francis Onditi²⁵ argues that the problem lies in the AU's lack of a doctrine for protection of civilians in armed conflict and this prevents its peacekeepers from taking the action necessary on the ground to protect children. He says that:

When the military [AU peacekeepers] gets to a militia it is not supposed to fire immediately. What it's supposed to do is to get out of the camp and then hide somewhere behind to make sure civilians, including children are not casualties or they are not collateral damage. That is contradicting with the asymmetrical conflict situations that Africa is experiencing because if you are to follow those guidelines that are provided by the UN and the African Union then you will not protect even the civilians themselves. What we call asymmetrical warfare and conflict that has emerged since 1990 in Africa has really challenged the traditional doctrine of peacekeeping and therefore there is a need for that overhaul.

Developing a doctrine for protection of civilians in armed conflicts would ultimately require political will of AU member states to accept a change to how peace support operations are carried out. More importantly protection of civilians and especially CIAC has to be high on the AU agenda for the required change to be made to the *modus operandi* of APSA.

Another capacity constraint for AU bodies with a mandate to protect CIAC is a lack of monitoring mechanisms. Data and figures on how many civilians in general let alone children are affected by armed conflicts in Africa – and in other parts of the world for that matter - are difficult to access and the situation on the ground is usually not suitable for monitoring. Dr Dersso (2013) says that: “another limitation of the PSC's peace operations relate to the lack of a mandate to monitor and report serious violations of human rights” (p.208). No mandate

²⁴ AMISOM has the approval of the UN Security Council to operate in Somalia.

²⁵ Interview, 9 October 2013.

means no political backing from member states. He further explains that there is also a lack of expertise in AU peace support operations to monitor and report on human rights violations (*Ibid*). Without monitoring mechanisms those who violate children's rights during armed conflicts will continue doing so with impunity. Dr Solomon Dersso²⁶ says that: "the idea of monitoring can be used for the purpose of first giving a signal to the actors [in an armed conflict] that whatever it is that they are doing is being monitored, is being followed up". Tiruneh Sinnshaw²⁷ suggests that a monitoring mechanism can be used by the AU to name and shame governments that commit violations against CIAC. As mentioned in Chapter 2 this approach is being applied by the UN Security Council and some say it has proven successful (Sablière 2012). An opportunity for the AU could be to collaborate with the UN Security Council's Monitoring and Reporting Mechanism (MRM) to access data on CIAC. The AU's lack of such a monitoring mechanism can be seen as a consequence of CIAC not being high on its agenda and one can argue that had it been it would have been established by now. The AU Department of Social Affairs (2010b) suggests that the challenge of what it calls "missing data" can be addressed through cooperation among AU bodies which once again raises the challenge of synergy which has so far left a lot to be desired. Without a monitoring mechanism the AU cannot establish the needs of CIAC thereby rendering them invisible and this makes it difficult or almost impossible for the ACERWC to make empirical recommendations to member states on this issue.

3.4. Poor coordination with other actors

Poor coordination between the AU and other actors involved in providing protection for CIAC is another manifestation of the issue not being high on the AU agenda. These actors include RECs and civil society organizations (CSOs). As mentioned in Chapter 2, the 8 RECs recognized by the AU are playing an increasingly important role in protection of CIAC as pillars of APSA. RECs have more political clout at the sub-regional level as they are located at a closer proximity to areas of armed conflict. Dr Shimelis Tsegaye²⁸ points out that:

²⁶ Interview, 12 July 2013.

²⁷ Interview, 15 July 2013.

²⁸ Interview, 15 August 2013.

Given their compact nature, the common history of member countries, their similar political, economic and legal environment, coupled with their geographic proximity, RECs have been effective in intervening quickly and effectively to bring about peace both through peaceful negotiations and armed interventions.

According to the structure of ASF (African Standby Force) – which has yet to be operationalized – RECs in theory are supposed to contribute to AU peace support operations whenever the need arises. Francis Onditi²⁹ suggests that given the geopolitical and cultural dynamics of different regions in Africa it would be difficult for AU to coordinate action in favor of protecting CIAC. He suggests that RECs are in a better position to deal with the issue at the sub-regional level before it is taken up to the AU. However scholars such as Makinda and Okumu (2008) suggest that scarce resources are being diverted to RECs which could otherwise be used to build a stronger and more effective AU. Coordinating conflict early warning systems and peace support operations with RECs has been a challenge for the AU. In an article entitled *The Peacekeeping Travails of the AU and the Regional Economic Communities* Adekeye Adebajo³⁰ points out that: “ECOWAS and SADC [two RECs] that established security mechanisms before the AU was born in 2002 – and in the case of ECOWAS, have solid peacekeeping experience – often feel that the AU has more to learn from them rather than vice-versa” (cited in Akokpari *et al* 2009, p.134). This indicates that there is a reluctance to take orders from the AU.

The fact that APSA has not been fully operationalized can partly be attributed to poor coordination between the AU and RECs. Why is this important for protection of CIAC in Africa? Unless there is better coordination between these major actors their ability to protect CIAC - and to address other peace and security issues for that matter - will remain wanting and it also does not bode well for their credibility. A report commissioned by the PSC entitled *African Peace and Security Architecture (APSA): 2010 Assessment Study* argues that: “there appears to be a disconnect between the AU PSC and similar organs in the RECs. This is a crucial gap given that enforcing decisions of the PSC rests with its members who are also members of the RECs/RMs” (African Union 2010c, p.64). This essentially means that poor

²⁹ Interview, 9 October 2013.

³⁰ Executive Director of the Centre for Conflict Resolution in Cape Town, South Africa.

coordination with RECs has a negative impact on the PSC's credibility as the AU's lead organ for addressing peace and security issues in Africa. Catherine Maina³¹ on her part says that: "[RECs such as] ECOWAS, SADC and EAC are really working on issues of children". She also points out that one opportunity with regards to protecting CIAC is that the ACERWC is in discussions with different RECs on ways to improve their collaboration, including the latter providing them with support to visit areas where children are being affected. As this is a new initiative it is too early to tell how this relationship is developing and whether it can be seen as a model of AU-RECs coordination. Ultimately however RECs are comprised of AU member states hence if there is a lack of political will to address protection of CIAC at the AU level it is difficult to imagine that it would be any different at the sub-regional level. Poor coordination on this issue also exists between the AU and civil society organizations (CSOs).

Civil society organizations played a seminal role in drafting the ACRWC and advocating for its adoption by the OAU and they engage in all areas of children's wellbeing, including their protection in armed conflicts. As mentioned in Chapter 2, the CRC Committee and ACERWC need CSOs to submit alternative reports to those submitted by States Parties in order to comprehensively assess the implementation of children's rights in any given country. This means that through these reports they can bring to light violations against CIAC. Despite their efforts to engage with the AU they have often found the organization to be a restrictive environment. Franco Wandabwa³² says that CSOs find it very difficult to access bodies of the AU's peace and security framework. Chikezie Anyanwu³³ agrees and says that: "[t]he tendency for us in Africa is anything that comes from civil society is critical or is criticism so it should not be listened to. To some bureaucrats the moment you mention civil society [they say] "oh those trouble makers" (sic). CSOs with the technical capacity to deal with issues related to protection of CIAC usually find it difficult to engage with military establishments. Franco Wandabwa says that: "there should be an arrangement in terms of tapping this technical capacity from civil society so that we can move forward in terms of creating structures and institutions for protection of children". Poor coordination between peace and

³¹ Interview, 9 June 2013.

³² Interview, 25 July 2013.

³³ Interview, 17 July 2013.

security bodies of the AU and CSOs means that the former will not benefit from local knowledge in areas of armed conflict.

One opportunity for CSO engagement with AU is the earlier mentioned open sessions on women and CIAC organized by the PSC. However these meetings spend very little time talking about CIAC and instead give greater attention to gender related issues. Matthias Wevelsiep³⁴ suggests that CSOs should work on creating alliances among themselves and address disagreements in their own agendas in order to effectively engage with the AU. One such effort is the Civil Society Organizations Forum on the ACERWC - a platform where child-focused CSOs from all regions of Africa discuss children's rights issues on the continent and issue recommendations to the ACERWC. Members of the latter also participate in this forum which is usually timed to coincide with their own sessions. CSOs can also be granted an observer's status at ACERWC sessions which gives them a platform to advocate for children's issues that they feel should be addressed by this Committee.

The protection of CIAC in Africa - as well as elsewhere - goes beyond setting up institutional and legal frameworks, as important as they are. Despite the gravity of the situation the issue is not high on the AU agenda and this manifests itself in weak institutional and structural capacities. Challenges exist in the areas of: setting priorities, structure, resources and capacity, and poor coordination with other actors. The AU lacks an agenda and structure needed to holistically address the issue. There is also little synergy among AU bodies with mandates that include the protection of CIAC. In addition to this, they lack the resources and capacity required to ensure that children in these situations are protected. There is also poor coordination with RECs and CSOs in this area. Opportunities exist for addressing these challenges however there is a lack of political will among many AU member states to support changes that need to be made. As the actions of member states play a major role in how the AU functions, the following chapter will discuss why they lack the political will to deal with the issue of protection of CIAC.

³⁴ Matthias Wevelsiep (Adviser on ICT for statebuilding, Crisis Management Initiative (CMI), Helsinki, Finland). Interviewed on 26 August 2014 in Helsinki, Finland.

Chapter 4 Do AU member states have the political will to protect children in armed conflicts?

The African Union (AU) is not a supranational government with the power to enforce its will on its member states rather it is the commitment and political backing of the latter that determines its success. It is designed to support governments in implementing their obligations under different international and regional (AU) treaties. Lack of political will among AU member states to protect children in armed conflicts (CIAC) is preventing this issue from being high on the AU agenda.

4.1. Setting Priorities

Many AU member states' lack of political will on protection of CIAC is partly due to the fact that the issue is not high on their national political agendas. One of the findings of this study is that there seems to be a problem with setting priorities at the national level as children's rights in general is seen as being of secondary importance - as is the case within the AU. With regards to how governments of AU member states approach the issue of protection of CIAC, Chikezie Anyanwu¹ says that "[i]t would be left for when we are finished [with everything else] we can talk about the children and women" (sic). Franco Wandabwa² on his part says that: "[i]t is not that most African countries do not want to address [protection of CIAC] but it is just a challenge that sometimes they tell you that it is about priorities and all the different rhetoric that we hear about". What are these priorities? Children's issues may be of secondary importance to governments especially when they are one of the parties in an armed conflict which is most often the case in Africa. Matthias Wevelsiep³ agrees and says that: "you might find that some parts of government or government as a whole is actually involved in the conflict" and "broadly you can see that actually they are concerned for their own society their concern might be more towards their own ethnic group or even towards their own power base". This suggests that children who are not from the ethnic group that is dominant in a government are at a greater disadvantage and more vulnerable to being victims of armed

¹ Interview, 17 July 2013.

² Interview, 25 July 2013.

³ Interview, 26 August 2014.

conflict. Almost all interviewees who participated in this study said that governments of AU member states are not doing enough to protect CIAC.

Another challenge to setting CIAC as a priority at national level is a communication and information void as many people in AU member states do not know about children's rights that their governments are obliged to uphold. Many AU member states have low literacy rates which compounds this void. A web page on the United Nations Educational, Scientific and Cultural Organization's (UNESCO) website entitled *Literacy and non-formal education* states that: "38 % of African adults (some 153 millions) are illiterate, two-thirds of these are women" and "[o]nly 1 % of national education budget[s] of most African governments is earmarked to address the issue of literacy" (UNESCO s.a.). Low budget allocation by governments to address illiteracy perpetuates this information and communication void illustrating that this is not a priority on national agendas. Adult literacy rates can however vary between countries for example a factsheet by UNESCO's Institute of Statistics entitled *Adult and Youth Literacy* points out that figures can range from a low of 25 percent in Guinea to a high of 94 percent in Equatorial Guinea according to 2011 figures (UNESCO 2013). One would also have to take into account differences in population size as well. Nevertheless, illiteracy continues to be a problem in many AU member states.

This information void also prevents people from communicating violations against children's rights - including those committed during armed conflicts - to the ACERWC. Lloyd argues that:

In practice, granted rights [by the ACRWC] are often violated with impunity because unaware of such rights, people are unable to take steps to demand them. Thus, communications [on violations of children's rights] do not reach the Committee [ACERWC] and in return the effectiveness of the Committee is reduced" (2002a, p.27).

Dr Kaime agrees and points out that: "[t]he availability of information on the rights and welfare of the child has a direct impact on the quality of protection that children receive" (2009, p.178). Governments' inaction to address this information void affects the effectiveness of

ACRWC. Franco Wandabwa⁴ says that he has personal experiences of travelling to some African countries where he would visit a Ministry of Children's Affairs or Women's Affairs and staff would tell him that they do not know about ACRWC. He suggests that: "maybe they are not informed, they do not know about it, they do not report about it, it is not used, it is not domesticated" (sic). Raising awareness about ACRWC and CRC at the societal level is part of governments' responsibility to domesticate these treaties that they are party to. How can governments plug this information and communication void? Answering this question goes beyond the scope of this study and an area for future research would be to identify what are the missing links between government commitments at the international and global level and national structures for communicated them to the societal public.

A third challenge to setting CIAC as a priority at the national level is that there is a wide gap between governments' ratification of child rights treaties and their implementation. Chikezie Anyanwu⁵ argues that: "[i]t is not an issue of legislation or ratification, it is an issue of implementation and I think there is a BIG, BIG gap between implementation and ratification". In 2010, the AU Department of Social Affairs reported that most AU member states had failed to meet their commitments to a 2007 resolution on a plan of action for an Africa Fit for Children (AFFC) - a guideline for improving children's wellbeing that includes ensuring their right to protection (African Union 2010b). Franco Wandabwa suggests that even though governments ratify treaties at the AU level some of them do not feel obliged to domesticate them. This raises a question on whether some AU member states sign treaties with no real intention of implementing them.

Despite these challenges, Franco Wandabwa says that some governments have prioritized protection of CIAC. For example, he says that: "[t]he Government of Uganda did a lot of work around demobilization of children, those who are returning from the LRA [Lord's Resistance Army] conflict. A lot of work was invested by the government around demobilization and making sure that children are able to reintegrate in their communities". He however notes that more could have been done by the government to prevent children from being recruited or

⁴ Interview, 25 July 2013.

⁵ Interview, 17 July 2013.

abducted by LRA in the first place. As mentioned in the previous chapter the Ugandan government blocked efforts by ACERWC to investigate a communication it received regarding its failure to protect children from being abducted by the LRA. Having being forced out of Uganda, the LRA now operates in areas bordering the Central African Republic, Democratic Republic of Congo, and South Sudan and the AU has established a regional task force to fight against the group from multiple fronts. The AU Commission says that: “[e]ach of the forces under the AU’s Regional Task Force against the LRA operating in the Central African Republic, the Democratic Republic of the Congo and South Sudan have a child protection component who is responsible for providing [CIAC with] a secure environment” (African Union 2014a, p.9). It also says that each of the military forces that are part of the task force have standard operating procedures on how to receive children associated with armed forces or armed groups. After documentation children are transferred into the care of local child protection partners in their country of origin (*Ibid*).

The Government of South Sudan, according to Franco⁶, is also prioritizing protection of CIAC through its post-conflict reintegration programs. According to the AU Commission:

In the Republic of South Sudan, for example, a Sudan People’s Liberation Army CPU [Child Protection Unit] was established in December 2009. 1,600 SPLA officers were selected and trained as members of the CPU, a military Code of Conduct was developed, and more than 10,000 officers and non-commissioned officers benefited from child protection awareness training. At the same time military orders were released to division commanders to release and hand over child recruits (African Union 2014a, p.6).

It also points out that Uganda, Rwanda, and Burundi have undertaken similar processes of training military personnel in child protection and ensuring the release of child recruits. There is a big difference between receiving training and practice and information on the latter is difficult to find. Whatever progress was being made in South Sudan was however short lived as fighting between factions of the Sudan Peoples’ Liberation Army (SPLA) broke out on 15

⁶ He made these comments in an interview on 25 July 2013 before fighting broke out in South Sudan between factions of the government.

December 2013 and children were recruited to fight. In a report to the UNSC on 15 May 2014, UN Secretary General Ban Ki-Moon said that there was evidence that both factions were committing grave violations against children including recruiting them as child soldiers (Secretary General Report 2014). At the time of writing, his Special Representative on Children and Armed Conflict is trying to get the government to recommit to the process of ensuring that no children are recruited in its armed forces. This example shows that children's rights can easily be sidelined whenever armed conflict erupts. Another challenge to protection of CIAC that negatively affects implementation of child rights treaties at the national level of AU member states is lack of resources and capacity.

4.2. Resources and Capacity

Many AU member states' governments do not have the resources and capacity to protect CIAC. One challenge in this regard is poverty and socioeconomic factors. Tiruneh Sinnshaw⁷ observes that: "the evidence seems to indicate that child protection, human rights seem to be functions of overall socioeconomic development. There is better appreciation of child rights in most socioeconomically developed countries, China not exempted". Dr Solomon Dersso⁸ agrees and says that protection of CIAC is related to countries' political and socioeconomic failures and one cannot address the former without dealing with the latter. However this should not be misinterpreted to mean that governments should wait until they have dealt with their political and socioeconomic failures before addressing protection of CIAC rather these should be dealt with simultaneously. For example, as Somalia is trying to rebuild after being a failed state for more than 2 decades its government is trying to implement a plan to protect children from recruitment into its armed forces and from being killed or maimed in the ongoing fight against the armed group *Al-Shabaab*.

Poverty can also be a pull factor for children to join armed groups as mentioned in Chapter 1. The AU Commission agrees and says that: "[i]n countries experiencing conflict, prevailing social conditions—including chronic poverty, high unemployment, and children without

⁷ Interview, 15 July 2013.

⁸ Interview, 12 July 2013.

parents—may increase the risk of children being (re)recruited into armed forces or groups” (African Union 2014a, p.18). However, in an article entitled *Children and DDR* Irma Specht⁹ argues that: “although poverty may create a general vulnerability to military recruitment, it cannot be the only factor” and “[p]overty is an environmental factor that sets the context, without which the risk of recruitment would be greatly reduced” (cited in Nosworthy 2009, p.195). Closely linked to poverty and socioeconomic factors is a challenge of lack of adequate resources for child protection.

Lack of resources for child protection is a function of political will of AU member states’ governments to address the issue. A 2012 report by the Africawide Movement for Children (AMC)¹⁰ entitled *An Africa Fit for Children: Progress and Challenges* says that: “[g]enerally, resource mobilisation and allocation towards the realisation and enhancement of children’s rights is weak in most African countries” and “there is evidence of poor governance leading to the misuse of available funds as well as lack of the necessary political will to invest in child wellbeing” (2012, pp.17-18). Misuse of funds could mean that they are lost to corruption or are diverted for other purposes. Dr. Solomon Dersso¹¹ on his part suggests that in times of armed conflicts governments lack the capacity and resources to protect CIAC as they are more invested in maintaining political power.

With regard to domestication of CRC or ACRWC, the AU Department of Social Affairs (2010b) says that legal reforms at the national level are usually only implemented in urban areas due to resource constraints. Is this due to lack of resources or do governments only implement these reforms in urban areas to present a façade of progress to donors and not out of a genuine commitment to ensure protection of children’s rights? Though answering this question goes beyond the scope of this study suffice to say that a lack of resources for child protection in general is partly a consequence of a lack of political will by governments to prioritize children’s rights. Another challenge related to resource and capacity constraints for child protection is weak institutional capacities at the national level.

⁹ Director of Transition International, a consultancy firm based in the Netherlands.

¹⁰ The Africawide Movement for Children (AMC) is a pan-African civil society organization that promotes collective efforts among non-state actors to realize children’s rights in Africa.

¹¹ Interview, 12 July 2013.

In many AU member states, government bodies charged with addressing child-related issues are plagued by weak institutional capacities. The AMC agrees and observes that: “[in most African countries] limited progress has been made towards the establishment of strong and effective institutions to propel and advance the realisation of children’s rights at country level”. ACPF takes a stronger position in saying that: “[in most African countries] child protection systems are largely non-existent” (2013, p.xiii). How can this be the case 25 years after most African countries adopted CRC and 15 years since ACRWC came into force? Franco Wandabwa¹² suggests an explanation by saying that most African countries are developing countries and the institutional and structural framework for child protection is in a “growing mode” therefore one cannot compare them with more established systems in the West. This argument however cannot explain why some governments fail to ensure that children are not recruited into armed forces or at least why they do not adopt a strict policy for militaries to abide by. Tiruneh Sinnshaw¹³ offers a different perspective in saying that governments of African and some Southern Asian countries - especially Bangladesh and Myanmar (Burma) - have too many priorities on their political agenda including poverty alleviation, education, and infrastructure development and these are usually set by external actors. He says that: “[African governments] are always responding to the World Bank, UN Resolutions, Summit Goals, to the Millennium Development targets [United Nations Millennium Development Goals]” and “they are busy reacting to international decisions rather than really making their own decisions based on their own resources and capabilities”. This study has not found any evidence to suggest that donors can influence AU member states to invest more in child protection hence this could be an area for future research. Were children’s protection high on national political agendas governments would include it among their set of priorities before seeking external assistance rather than making it an afterthought. A briefing note by the Bond Child Rights Group¹⁴ (s.a.) entitled *Children’s rights and the post-2015 development agenda* observes argues that the United Nations Millennium Development Goals (MDGs) - an international framework for poverty alleviation in developing countries - did not include a goal

¹² Interview, 25 July 2013.

¹³ Interview, 15 July 2013.

¹⁴ Bond Child Rights Group is a platform for NGOs in the United Kingdom to jointly advocate for children’s rights at the national, EU and international levels.

on child protection. This indicates that there is also work to be done to ensure that child protection is high on the international agenda as well.

At the national level of AU member states there is also a challenge of synergy between government bodies with a mandate relating to protection of children's rights. The AU Department of Social Affairs points out that: "[m]any countries have government agencies with a mandate for the rights and wellbeing of the child that seem to be insufficiently aware of or engaged with other government agencies who have child-related responsibilities in the context of conflict or post-conflict activities" (African Union 2010b, p.102). Children's affairs at the national level are most often than not clumped with social affairs/services, gender or women's affairs and dealt with by one Ministry that is usually among those that receive the lowest budget allocation (ACPF 2013). However, Francis Onditi¹⁵ says that African countries with adequate resources are adopting a new mind set and establishing independent Ministries for children's affairs. However the AMC argues that: "[in most African countries] the institutional framework for children's rights often lacks impetus and sustainability" and "[t]his is due, principally, to lack of autonomy (financial in particular), overlaps in mandates and duplication of efforts" (2012, p.14). It also describes challenges to the institutional framework for children's rights in Uganda and Cameroon. AMC (2012) says that in Uganda, a National Council for Children - established in 1996 to coordinate child-related activities - was unable to fulfill its mandate due to a lack of autonomy, limited resources and a heavy dependence on support from CSOs. In the case of Cameroon, it says that there are 6 Departments within 6 different Ministries with a mandate to ensure children's rights making it difficult to follow-up on how the country is implementing its obligations (*Ibid*). It also says that a body established to coordinate child focused activities in the country called the National Commission for the Protection of Children at Risk, Juvenile Delinquents and Abandoned Children lacks adequate resources, has no permanent office, and lacks a presence at regional and local levels (*Ibid*). These examples illustrate a lack of synergy and one may argue that spreading responsibilities among many government agencies is not an optimal use of financial resources and this creates an environment where duplication of efforts is likely to occur. Another challenge at the

¹⁵ Interview, 9 October 2013.

level of AU member states that contributes to their governments' lack of political will to support protection of CIAC is traditions and societal perceptions on children's issues.

4.3. Traditions and Societal Perceptions

Traditions and societal perceptions in many AU member states contribute to their government's lack of political will to address children's rights issues, including protection of CIAC. One challenge is in striking a balance between governments' obligations to implement their obligations under CRC and ACRWC on the one hand and a need to respect traditional and religious practices and laws on the other. The AU Department of Social Affairs observes that: "despite the clarity of provisions of the African Children's Charter [ACRWC], domestic lawmakers often remain resistant to the passage of laws that place the best interests of the child above traditional and religious practices and laws" (African Union 2010b, p.96). As mentioned in Chapter 2, one of the reasons why AU member states decided to adopt the ACRWC is because the CRC did not take into account children's rights issues that were unique to the continent such as harmful traditional practices and the duties of a child. Despite the fact that ACRWC was designed to illustrate complementary between human rights and culture it faces resistance in its implementation. Franco Wandabwa¹⁶ says that realizing child protection at national levels is challenged by perceptions that child rights treaties ratified abroad are foreign concepts that do not apply to the local context. The wording of some of the Articles of the ACRWC leaves room for interpretation at the national level. Article 31 of the ACRWC on 'Responsibility of the Child' states that:

The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty...to serve his national community by placing his physical and intellectual abilities at its service [and]... to preserve and strengthen the independence and the integrity of his country'.

Despite the drafters' intentions to ensure cultural legitimacy of the Charter, this Article could be misinterpreted by the leadership of armed forces for example as allowing for children's

¹⁶ Interview, 25 July 2013.

recruitment under the pretext that he/she is protecting “the integrity of his country”. The ACERWC has not issued an elaboration on the meaning of Article 31 and most other articles of the ACRWC for that matter (African Union 2010b). This is mostly due to its own resource and capacity constraints as discussed in Chapter 3.

Another challenge related to traditions and perceptions is that children’s rights - including their right to protection - are not developed at the societal level in many AU member states. Tiruneh Sinnshaw¹⁷ says that: “there is this general inertia and ignorance about not looking at children differently and a lack of appreciation of [their] special needs”. Lloyd agrees and argues that: “[c]hildren’s rights are problematic, because not all African societies believe that children deserve special status” (2002a, p.31). Tiruneh Sinnshaw and Chikezie Anyanwu¹⁸ both point out that though there is a love for children in most African cultures children’s issues are not seen to be a priority. Francis Onditi¹⁹ argues that:

If you look at the development framework in Africa, children have never been in the center [of the agenda] because in the African context children are not traditionally expected to make decisions. They are supposed to follow the decisions that are been made by other people, either parents, guardians or the society or the traditional leaders.

This suggests that children in many African countries lack opportunities to voice their opinions on issues that are important to them which may be posing a barrier to their ability to influence national political agendas. This in turn weakens governments’ capacity to protect children. Tiruneh Sinnshaw says that there is an assumption at the societal level of most African countries that children are innocent and therefore will not be victimized in armed conflicts. As long as protection of CIAC is not prioritized at the societal level it will not be high on national political agendas. In support of this, Francis Onditi²⁰ says that: “[African governments] have not made an effort at the societal level to develop institutions that would consequently change people’s attitudes towards children. In certain societies children are not considered as people

¹⁷ Interview, 15 July 2013.

¹⁸ Interview, 17 July 2013.

¹⁹ Interview, 9 October 2013.

²⁰ Interview, 9 October 2013.

who can contribute to either a social, economic or political process”. This illustrates how the challenge of weak institutional capacities affects how children’s issues are viewed at the societal level and this is a manifestation and product of a lack of political will from governments to prioritize children’s rights on their national political agendas.

This chapter has discussed some challenges at the level of AU member states that seem to contribute to their lack of political will to support protection of CIAC from being high on the AU agenda. One challenge is a problem of setting priorities at the national level as children’s rights in general is seen as being of secondary importance. In addition to this, a communication and information void exists where many people in AU member states do not know about children’s rights that their governments are obliged to uphold hence they cannot hold them to account. Another challenge is that many AU member states do not have the resources and capacity to protect CIAC. This is influenced by poverty and socioeconomic factors and weak institutional capacities. A third challenge is that traditions and societal perceptions in many AU member states contribute to their government’s lack of political will to address children’s rights issues. These are not an exhaustive list of all the challenges at the national level that could contribute to governments’ lack of political will. All of these challenges are however reflected in the way AU member states engage with issues of children’s rights - including protection of CIAC - at the AU. Given the fact that decision making in the AU is concentrated at the apex level of the AU Assembly, protection of CIAC will not be high on the agenda until member states make children’s rights a priority on their national agendas.

Chapter 5 Conclusion

This study set out to investigate whether the African Union (AU) has the capacity to protect children in armed conflicts. Given the gravity of the situation in Africa and the fact that children make up about half of the continent's population it seems that addressing this issue is a test of the AU's commitment to ensuring peace and security and protecting human rights. The main findings of this study are that AU lacks the institutional and structural capacity to protect children in armed conflicts and a determining factor is a lack of political will among many of its member states to deal with the issue. Its institutional and structural challenges to addressing protection of children in armed conflicts lie in the areas of: setting priorities, structure, resources and capacity, and coordination with other actors. Challenges at the national level of AU member states – the principal actors in the organization - lie in the areas of setting priorities, resources and capacity, and traditions and societal perceptions. All of these challenges are reflected in the way AU member states engage with issues of children's rights - including protection of children in armed conflicts - at the AU.

The theory developed from an analysis of this study's findings is that the AU's lack of capacity to protect children in armed conflicts is both a manifestation and product of the issue not being high on its agenda. It shows how the identified issues of political will and institutional and structural challenges are interlinked in that the latter cannot be addressed without changes to the former. Given the fact that decision making in the AU is concentrated at the apex level of the AU Assembly of Heads of State and Government, it does not seem likely that protection of children in armed conflicts will be high on the organization's agenda until member states make children's rights a priority on their own national agendas.

The author acknowledges that there are many important issues related to protection of children in armed conflicts in Africa including the role of the family, community, houses of religious worship, traditional leaders, and the private sector among others. Although these issues were not included in the research design, questions for in-depth interviews with key informants were designed in a way that would allow for them to emerge. Indeed some of them were raised by interviewees however not in direct relation to the subject of the study.

Due to the dearth of literature on this subject there are a number of issues identified in this study that require further research. There is for example a need to investigate why many governments in Africa have been unable to plug the information and communication void at the societal level where many people have no knowledge about the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention on the Rights of the Child (CRC) as well as other instruments for protecting children's rights. What are the missing links between government commitments at the international and global level and national structures for communicated them to the societal public? There is also a need for greater knowledge on how legal reforms for protection of children's rights are made at national levels. Why are legal reforms only implemented in urban areas? Is it due to resource and capacity constraints? This question relates to another area for future research which is to investigate what influence donors have on AU member states' decisions on how much they invest on child protection. This is by no means an exhaustive list of areas for future research rather they are questions that emerged during this study.

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Appendix: List of Key Informants

1. Ayalew Legesse Yesuph [Child Protection Assistant Coordinator, Ethiopia Program, International Rescue Committee]
2. Catherine Wanjiru Maina [Senior Social Worker, Secretariat of the African Committee of Experts on the Rights and Welfare of the Child]
3. Chikezie Anyanwu [Pan African Program Specialist, African Union Liaison & Pan Africa Program Office; Plan International]
4. Daniel Tefera [Lecturer in the Department of Psychology at Addis Ababa University and Deputy Chair of the General Assembly of ANPPCAN (The African Network for the Prevention and Protection against Child Abuse and Neglect) Ethiopia Chapter]
5. Francis Onditi [Regional Child Protection Project Coordinator, Save the Children East Africa Regional Office]
6. Franco Wandabwa [Advocacy Director, Africa Area Office, Save the Children]
7. Mary [Pseudo] [Staff member of an international organization]
8. Jean François Basse [Child Protection Adviser, Department of Peace and Security, African Union Commission]
9. Matthias Wevelsiep [Adviser on ICT for statebuilding, Crisis Management Initiative (CMI)]
10. Michael [Pseudo] [Staff member of a regional organization]
11. Shimelis Tsegaye, PhD [Head of the Child and the Family Programme, The African Child Policy Forum (ACPF)]
12. Solomon Dersso, PhD [Head of the Peace and Security Council Report, Institute for Security Studies (ISS)]
13. Tiruneh Sinnshaw [Retired staff member of UNICEF and currently Public Health Consultant]
14. Vincent Ochilet [Deputy Head , International Committee of the Red Cross (ICRC) to the African Union]